IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 23-12825(MBK)
	.	
	.	Clarkson S. Fisher U.S.
LTL MANAGEMENT LLC,	.	Courthouse
	.	402 East State Street
	.	Trenton, NJ 08608
Debtor.	.	
. . . . .	.	
LTL MANAGEMENT LLC,	.	Adv. No. 23-01092 (MBK)
	.	
Plaintiff,	.	
	.	
v.	.	
	.	
THOSE PARTIES LISTED ON	.	
APPENDIX A TO COMPLAINT and	.	
JOHN AND JANE DOES 1-1000,	.	
	.	Tuesday, May 16, 2023
Defendants.	.	10:01 a.m.
. . . . .	.	

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE AND MOTION HEARING

BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES ON NEXT PAGE.

Audio Operator: Kiya Martin

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@jjcourt.com

(609) 586-2311 Fax No. (609) 587-3599

TELEPHONIC APPEARANCES:

For the Debtor:	Jones Day By: GREGORY M. GORDON, ESQ. DAN B. PRIETO, ESQ. AMANDA S. RUSH, ESQ. 2727 North Harwood Street, Suite 500 Dallas, TX 75201 Skadden Arps Slate Meagher & Flom, LLP By: ALLISON M. BROWN, ESQ. One Manhattan West New York, NY 10001
For Ad Hoc Committee of Certain Talc Claimants and Ad Hoc Committee of Creditors:	Genova Burns LLC By: DANIEL M. STOLZ, ESQ. 494 Broad Street Newark, NJ 07102 Brown Rudnick LLP By: JEFFREY L. JONAS, ESQ. DAVID J. MOLTON, ESQ. MICHAEL WINOGRAD, ESQ. 7 Times Square New York, NY 10036 Brown Rudnick LLP By: SUNNI BEVILLE, ESQ. One Financial Center Boston, MA 02111 Otterbourg PC By: MELANIE CYGANOWSKI, ESQ. 230 Park Avenue New York, NY 10169
For the Office of the United States Trustee:	Office of the United States Trustee By: LINDA RICHENDERFER, ESQ. JEFF SPONDER, ESQ. J. Caleb Boggs Federal Building 844 King Street, Suite 2207 Lockbox 35 Wilmington, DE 19801

TELEPHONIC APPEARANCES CONT'D:

For Anthony Hernandez Valadez:	Kazan McClain Satterley & Greenwood By: JOSEPH SATTERLEY, ESQ. 55 Harrison St. Suite 400 Oakland, CA 94607
Various Talc Personal Injury Claimants:	Watts Guerra LLP By: MIKAL C. WATTS, ESQ. 5726 W. Hausman Road, Suite 119 San Antonio, TX 78249
For Various Talc Claimants:	Maune Raichle Hartley Frency & Mudd, LLC By: CLAYTON L. THOMPSON, ESQ. 150 West 30th Street, Suite 201 New York, NY 10001 Levy Konigsberg, LLP By: JEROME H. BLOCK, ESQ. MOSHE MAIMON, ESQ. 101 Grovers Mill Road, Suite 105 Lawrence Township, NJ 08648 Simon Greenstone Panatier, PC By: LEAH CYLIA KAGAN, ESQ. 1201 Elm Street, Suite 3400 Dallas, TX 75720
For Claimant Alishia Landrum:	Beasley Allen By: ANDY BIRCHFIELD, ESQ. 218 Commerce Street Montgomery, AL 36104
For Arnold & Itkin:	Pachulski Stang Ziehl & Jones LLP By: LAURA DAVIS JONES, ESQ. 919 North Market Street 17th Floor Wilmington, DE 19801
For Paul Crouch, individually and on behalf of Estate of Cynthia Lorraine Crouch:	Ruckdeschel Law Firm, LLC By: JONATHAN RUCKDESCHEL, ESQ. 8357 Main Street Ellicott City, MD 21043

TELEPHONIC APPEARANCES CONT'D:

For the Ad Hoc Committee of Attorneys General:	Womble Bond Dickinson By: ERICKA JOHNSON, ESQ. 1313 North Market Street Suite 1200 Wilmington, DE 19801
For Randi Ellis, Proposed Future Claims Representative:	Walsh Pizzi O'Reilly Falanga LLP BY: LIZA M. WALSH, ESQ. Three Gateway Center 100 Mulberry Street, 15th Floor Newark, NJ 07102
For Ad Hoc Committee of Supporting Counsel:	Paul Hastings, LLP By: KRIS HANSEN, ESQ. 200 Park Avenue New York, NY 10166
For Ad Hoc Committee of Mesothelioma Claimants:	Gupta Wessler PLLC By: DEEPAK GUPTA, ESQ. 2001 K Street, NW Suite 850 North Washington, D.C. 20006
For the Talc Claimants Committee:	Massey & Gail LLP By: JONATHAN S. MASSEY, ESQ. The Wharf 1000 Maine Avenue, SW Suite 450 Washington, D.C. 20024
For States of New Mexico and Mississippi:	Gibbons P.C. By: ROBERT K. MALONE, ESQ. One Gateway Center Newark, NJ 07102

- - - - -

(Proceedings commenced at 10:01 a.m.)

THE COURT: Good morning, everyone. This is Judge Kaplan. I hope everybody is doing well. We are this morning addressing a variety of motions in LTL. And because it's all remote, I will ask those who wish to be heard at some point to raise their hand. I see Mr. Molton already asked. Quick on the draw.

I would like to start, and I'll go to Mr. Molton in a second.

THE CLERK: (Indiscernible) no sound.

THE COURT: What was that?

THE CLERK: They can't hear the sound.

THE COURT: Can you all hear me?

MR. MOLTON: All good, Judge.

THE COURT: Okay. All right.

My suggestion is that we address the motion to suspend, the motion with the -- as far as scheduling with disclosure statement, as well as the correspondence on the motions to dismiss collectively because they are somewhat related.

Mr. Molton, you are the first one with the hand up.

MR. MOLTON: Judge, I was going to propose a similar sequencing. Maybe a little different since that's what you're going to hear from me today a little bit about today is sequencing. My suggestion was going to be but, needless to

say, Your Honor, this is your courtroom and we'll follow your lead, motion to dismiss status conference followed by motions pertaining thereto, following by the suspension abeyance motion, followed by a disclosure statement status conference, if appropriate. But we'll follow your lead, Judge.

THE COURT: I think it will all fall in place.

Mr. Gordon, did you have any thoughts?

MR. GORDON: Good morning, Your Honor. Greg Gordon on behalf of the debtor.

Our thoughts actually were consistent with yours. We think it would be helpful to take the scheduling matters first and primarily the motion to dismiss scheduling and the suspension scheduling because that will help inform I think the other motions, including disclosure statement scheduling and the like.

And the other thing we might want to consider upfront is I know Your Honor wanted to talk about scheduling of omnibus hearing dates, as well.

THE COURT: Right.

MR. GORDON: It might make sense to lay some of those out also because I think those might be helpful in dealing with some of the other matters.

THE COURT: All right. Well, let's start with let me hear the motion to suspend if that works.

MR. MOLTON: Judge, that works and I guess that

throws the baton to me.

THE COURT: Yes.

MR. MOLTON: Thank you, Your Honor.

Hello. Good morning, everybody that I see in the Zoom webinar as well as those on the audio Zoom or non-participating video Zoom. My name is David Molton of Brown Rudnick, and I am -- and Brown Rudnick is along with co-counsel with me, proposed counsel to the TCC.

Your Honor, the TCC, as you know, is a fiduciary for all the talc claimants in this case. And all of its positions and the positions it advances today are on behalf of all of those claimants in fulfillment of their fiduciary duty to them.

Back to the cross-motion to suspend the case, Judge. It's really very simple. Again, and I'm not going to spend a lot of time on it. Your Honor has full briefing including our reply which was filed yesterday that I think answers the case law issues and legal issues that were raised by the debtor's opposition, and I'm not going to waste or burden the Court's time going through that. I know Your Honor read it.

But this case, where we are now is about sequencing and case management. I think no one disagrees that Your Honor has the authority to order and manage this case in the manner described in our cross-motion. Myself and Mr. Gordon and others may joust on whether we look to Section 305(a), the Federal Rules of Civil Procedure Section 105, or this Court's

own inherent authority.

But I think it's fairly safe to say that everyone would agree that this Court can manage this case in the way that it thinks is proper for the circumstances of this case. And clearly, what we're suggesting is Your Honor setting a dismissal track first and foremost which I think is how it's fallen out and indeed we're looking forward to trying the dismissal motions at some point with all due speed and alacrity, a word that I like, next month.

What the objections really come down to, Judge, is a question of what is appropriate here, what's in the best interest of the creditors of this estate, and the best interest of the case under the circumstances of this case. Again, I'm not going to go over the case law that we raised yesterday and dealt with the debtor's arguments.

But what do courts look for when considering suspension or a simple abeyance under the Court's inherent case management authority is a non-exclusive list of factors that are pertinent here: the interest of both the creditors and the debtor, the interest of economy and efficiency, the best interest of creditors, and also whether there are case determinative issues, gating issues, significant gating issues that need to be decided before this case proceeds on a path that will certainly under the circumstances of this case, which are well known to everybody I see and everybody that I don't

see, are going to engender significant controversy, litigation, resources, and time.

We have in front of us with respect to the case determinative element, Your Honor, I think my count a week or two ago was seven motions to dismiss. I think New Mexico and Mississippi have now joined. Whether that's eight or nine, I'll leave it for other people to count. But we have a significant case determinative issue in front of Your Honor right now with respect to this second bankruptcy.

Critically, a final order on the motion to dismiss will answer the gateway question about whether this debtor can be in bankruptcy in the first place. From our position, Judge, we all know the sordid history of how we're here, why we're here, how we got here again. Again, the debtor is asking you to embark, and we saw a plan filed late last night. I don't know if they met their deadline of May 14th, but they met a deadline of getting it on the docket before this hearing, and we had no doubt that they would endeavor to do that.

Needless to say, Judge, we haven't read the plan or the disclosure statement in detail. We're going to study it. Needless to say, we've already identified some very problematic positions, and we also wonder if the Ad Hoc Committee law firms expected or support what we have seen filed last night. But those are questions for a different day.

Judge, the debtor is asking you to embark through

their filed plan of last night and disclosure statements a series of contentious litigations, investigations, disputes, and decisions that need to be made in connection with the plan process. There's substantial front-end litigation, discovery, and expert work that will have to be done before the solicitation process even kicks off.

All of this is premature and necessary and ultimately may be mooted by the motions to dismiss. And Your Honor knows that the bases of those motions are based on what I'll call LTL1 Third Circuit decision, no financial distress or bad faith as a result of manufactured financial distress as well as other reasons that have been raised in the motions.

For a plan to proceed, there will necessarily be classification and estimation for voting purposes. The Court cannot shrink away from addressing the serious issues of plan voting, especially under the circumstances of this case and classification, in other words, who can vote and in what amount and in what class. These are appropriate things to do, as Your Honor knows, using an estimation process and a tool which is a tool under the Code.

And as Your Honor knows, although we opposed untethered estimation last year, we did note that estimation can and often is proper when it's tethered to a legitimate plan issue such as voting or feasibility.

I think the Court agrees as much because it said so

last year, Judge, on July 28th, 2002 [sic] when you appointed your 706 expert, Mr. Feinberg, Hearing Transcript Page 7 to 8. I think you said the work of such an expert is especially critical in dealing with complex mass tort problems, reasoning that, quote, Courts cannot proceed towards a just and equitable result with some reasonable firm data projecting the numbers and volumes of claims at issue. and that all parties have a strong and conflicting interest in the character of the data. That's Your Honor.

And in the same transcript, Your Honor, on Page 5, I think you talked about it as a necessary pre-disclosure statement. You mentioned, Judge, quote, The Court believes strongly that all creditors and claimants have a right to this information, again, before voting on any plans. The Court recognized that a court expert neutral was the appropriate route. This Court concluded that, quote, These factors alone and in combination point to the necessity of a neutral expert providing assistance under the auspices of the Court. That's at Page 8.

And you recognized that a 706 expert's assistance would be necessary for a plan itself. Your Honor said it is a big ask, I believe, and this is Page 4, I believe, to have this Court approve the solicitation of one or more plans to confirm a plan with the requisite findings as to good faith under 1129(a)(3) and fair and equitable treatment without a

meaningful record evidencing the amounts needed to satisfy the claims, the amounts intended to be paid out, and the available funding.

This Court rightfully reviewed an independent estimation report as a necessary pre-condition to a disclosure statement in LTL 1.0. The debtor has now put forth a pot plan which again, Your Honor, we believe is a pot plan in an illegitimate bankruptcy and, therefore, that gating issue needs to go first. But that pot plan, it will be virtually -- with respect to that pot plan, it will be virtually impossible for any talc claimants to determine with any degree of certainty how much she or he will be paid and when without the necessary predetermined work, as I just mentioned.

It would be improper, Your Honor, for the debtor to solicit votes on a plan that on its face promises substantial payments to talc claimants within the next few years when in reality, we submit the plan delivers nothing more than pennies on the dollar possibly years or a decade from now.

Your Honor, the parties are poised to proceed to a motion to dismiss. It's my suggestion and the Committee's request that that's where all of our attention should be devoted. I know the debtor has its trial team, and we have our trial team. And other parties in interest have their trial lawyers working hard to get ready to present those matters to Your Honor, again, next month I believe. And that's where we

should go.

It's our request, Judge, in our suspension motion which again I don't think we need to belabor whether it's 305(a), 105, the Court's inherent authority. This Court has the authority and power to case manage its case in the way it believes proper. And our submission, Your Honor, is that in this case, it's proper to abey plan proceedings, as we argued in our motion, pending a final non-appealable order on the motion to dismiss.

If Your Honor does not accept abeyance pending final non-appealable order, then at a minimum, plan issues can and would be addressed in the event Your Honor contrary to our belief is what the evidence will show, but if Your Honor finds our motion to dismiss and others' motion to dismiss to be unsuccessful.

From a case management point of view, Your Honor, and in light of what Your Honor had mentioned I think at the May 3rd hearing, we're not on a time clock. Nobody's in a race. This is a complex case, probably one of the most if not the most complex case in the country right now. We should be focusing on the matter at hand and not engage in "beat the clock," which is what I think Your Honor, I'm paraphrasing Your Honor -- from the May 3rd hearing on Page 121.

In any event, Your Honor, that's our motion. We believe it's the way to structure a going forward coherent

rational way of dealing with the issues in front of you. And we ask Your Honor to accept that and grant our motion.

Thank you.

THE COURT: Thank you, Mr. Molton. Before I turn -- Mr. Thompson, that was going to be my question, is there anyone else who wishes to be heard before I turn to Mr. Gordon.

Mr. Thompson, go ahead.

MR. THOMPSON: Good morning, Your Honor. Can you hear me okay?

THE COURT: Yes, I can.

MR. THOMPSON: Okay. So I'm going to slightly disagree with Mr. Molton on -- I agree completely with the TCC that the focus needs to be on the motion to dismiss, and the reason for that is the Third Circuit told us to do that. Judge Ambro's opinion of January 30th said that good faith debtors are the only kinds of debtors that can access the tools of bankruptcy.

Chapter 11 has a number of tools: estimation, plan confirmation, voting on plans, solicitation. None of those tools are available to bad faith debtors, which is what LTL1 was, and post-fraudulent transfer, what LTL2 remains.

So before we do anything about this ridiculous plan that they filed last night, we have to determine whether the Court has subject matter jurisdiction, and there are several challenges to that, and we would ask you to address those

first. That is a gatekeeping matter.

The one thing that I would disagree with Mr. Molton on is the need for estimation. This plan is unconfirmable on its face. It violates Combustion Engineering. It violates LTL1. We don't need estimation to know that.

The proper purpose here needs to be addressed before we can get to anything else. Bad faith debtors, which is what J&J who's controlling LTL is, don't have access to Chapter 11 tools. They can't have them. And so rushing through a vote, this Court respectfully does not have power to do, and I would only disagree with Mr. Molton on the need for estimation. There's no need for estimation.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Thompson.

Mr. Satterley?

MR. SATTERLEY: Good morning, Your Honor.

May it please the Court, Joe Satterley of Kazan McClain Satterley & Greenwood.

I would agree with Mr. Thompson that the focus should remain on the motions to dismiss and evidence and that documents that are necessary for Your Honor to make the rulings on the motion to dismiss. All other matters should be deferred until Your Honor has had the opportunity to rule on the motions. Thank you, Your Honor. That's it.

THE COURT: Thank you, Mr. Satterly.

Bear with me. I don't see anyone else, so let me turn to Mr. Gordon.

MR. GORDON: Good morning, Your Honor.

Greg Gordon again on behalf of the debtor.

Your Honor, as you know from our papers, we view this motion as a very one-sided request by a group of firms that represent a minority of claimants in the case. And I note that Mr. Molton went out of his way to say that the Committee is representing all claimants in the case and the actions they're taking are for the benefit of all claimants in the case and on their behalf.

But as Your Honor knows, there is an ad hoc group of firms I think that would disagree with that who support the plan, who support the case, who very much want to move forward with a plan process. And we think what the Committee is asking you to do is actually prejudicial to their constituency. And I was listening against today. I still haven't heard the Committee explain what the prejudice is to the claimants in this case to permit a plan process to move forward in parallel with the motions to dismiss.

And to me, the Court should not be interested in a selective suspension of the proceedings that would do nothing but advance the litigation agenda of this minority group of firms at the expense of a process that not only has the support of the majority of claimants but as a process that hopefully

and ultimately will lead to the consensual -- the largely consensual resolution of claims in this case.

Now it was also interesting to me I thought Your Honor that Mr. Molton went back to the May 3rd remarks of the Court and actually cited to them but didn't actually address what the Court literally said at the May 3rd hearing, which to me was a clear indication that Your Honor thought it best to move forward with both the plan process and the motions to dismiss. And I think just to quote one thing you said in particular, I believe you said that "I do not intend to engage in 'beat the clock' on either side on the dismissal motion or the plan process."

Mr. Molton's spinning that to say, well, that meant that you wanted to proceed only with the dismissal motion and not have some sort of "beat the clock" with respect to the plan. What I heard was the opposite, which was you would allow these to proceed in parallel, but what you were saying was that you would separately consider the timing for each so that each track could move forward in a way that was reasonable and appropriate and would provide sufficient time for the parties to address the issues presented by each path.

And, frankly, Your Honor, I don't think there's anything in the motion that was filed by the TCC or in the comments made by counsel today that should cause Your Honor to deviate from that.

I also thought it was interesting that Mr. Molton spent considerable time going back to estimation in the prior case, appointment of a 706 expert in the prior case, and then he launched into some potential objections that the Committee has to the plan that was filed late last night. And, of course, suggesting when he talked about estimation that there's many issues that have to be addressed in connection with a plan, much work to do.

And to me, all of those comments are reasons why you should deny the relief sought by the TCC. In other words, those are reasons it seems to me to have the plan process move forward so that we can make some progress. And I don't know whether the Committee is worried somehow that the plan process could be completed before motion to dismiss could be heard and decided by Your Honor. But it seems to me there's no circumstance where that could happen.

And given that basically the arguments have been made this morning about all the work that needs to be done with respect to the plan, our view is then we should get -- we should move forward with the plan, again, on a schedule that Your Honor thinks is appropriate but that allows the parties to begin to address and resolve and if necessary have this Court resolve issues in connection with that process.

Briefly, just in terms of legal arguments, we don't think Section 305, which is the fundamental basis for the

Committee motion, could be used in the way it's being used here in the sense that there's really not any support for the idea that you can selectively suspend the case and permit a Committee basically to hijack the case and pursue its agenda and deny the debtor its right to proceed with the case in the way that it wants and particularly in this case where you've got a process that's supported by literally thousands of claimants.

Also, Your Honor, if you -- and I should say with respect to that issue, the cases that we cited and other authorities that we cited including Collier and the rest and the language of the statute itself all seem to indicate that it's an all or nothing proposition with respect to suspension. In addition, we don't see how suspension's in the best interest of the claimants and, again, for the reasons that I said before that we have a plan on the table that has support. And we think it's in the best interest of all parties to move forward with that.

And, also, Your Honor, I would just say generally, with respect to the law, this is not the prototypical suspension case where there's some alternative forum that may be available to resolve the issues this case presents. To the contrary here, bankruptcy is the only forum in which these claims can be resolved including future claims.

So, Your Honor, just to sum up, in our view, you

should stick with the views you seems to express, at least as we understood them on May 3rd. We would ask that you would deny this request, that you would permit us to move forward with a plan process. And, again, we can address the timing of that and will I guess later this morning address the timing of that. But we believe that would be in the best interest of all the claimants.

The parties have counsel. They can certainly handle this in parallel. We can do both the dismissal track and the plan track. And we just think, Your Honor, it would be in appropriate to allow this group of firms to get their way and deny the majority of firms their entitlement to move forward with a plan that they believe fairly resolves and appropriately resolves the claims in this case.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Gordon.

Mr. Hansen, on behalf of the Ad Hoc Committee?

Speaker. I think you're muted. You're still muted.

MR. HANSEN: Can you hear me now, Your Honor?

THE COURT: Now we can.

MR. HANSEN: I was working off the wrong speaker.

Your Honor, Kris Hansen with Paul Hastings on behalf of the Ad Hoc Committee of Supporting Counsel.

Your Honor, I'd just start by saying that this is truly within the Court's discretion which I think everyone here

agrees with. And the decision from a discretion perspective should not be to slant the proceedings in any one way or the other to advantage any party in the case. I think it should be to give everyone in the case a fair shot at everything that's being put in front of the Court.

What I would say as the newcomer here is that I've been surprised, I'm sure no one else is, by the proliferation of pleadings that happened in connection with this case and by the vitriol that gets traded between the parties. None of it seems particularly productive from our perspective. And what we would love to see is global consensus.

Regarding the plan that was put on file last night, we have issues with it but that's normal. People have to work through documents to get to a conclusion. That's how these cases go. You know that, Your Honor. You've been on the bench a very long time.

You have two really capable mediators that you appointed. Our request would be that you send us all to mediation as soon as possible to see if we can find a global resolution to this case and we can stop the burn associated with endless motion practice which seems to have no end in sight.

If you're not prepared to do that, Your Honor, I think our view is advance the case on all fronts and let the parties see if they can find a way to come to a conclusion

themselves. Again, as the outsider here, I would say that it really seems apparent to me that the parties need the help of the mediators that you've appointed. And if you were going to really make that mediation meaningful, the real question for the Court is whether you suspend everything while we advance ourselves to mediation or whether we go to mediation while we continue to prep the motions to dismiss and keep the disclosure statement time on and deal with all the objections that are filed to that.

I don't really have an opinion on that, Your Honor, although I do know that having participated in a lot of mediations, when everyone's focus is on the mediation, they tend to get to a deal. The other thing I'd say, Your Honor, too, is that Mr. Molton was clear in saying now, now that the mandamus has been denied and the attempt to take this case away from you on an unprecedented and expedited basis is over, Mr. Molton's view if we have plenty of time. There's nothing here to rush about.

So if we have plenty of time, there's no reason to sequence things in the way that the TCC wants. And I come back to it again, Your Honor, and just say that from our perspective, if you're not inclined to send us all to mediation, then move the case forward so that no one's prejudiced by process. And if you are inclined to send us to mediation, which is what the Ad Hoc Committee of Supporting

Counsel thinks should be done, the real question which we should all discuss is what goes on in the case while we're at mediation.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Hansen.

Ms. Richenderfer?

MS. RICHENDERFER: Thank you, Your Honor. Good morning.

THE COURT: Good morning.

MS. RICHENDERFER: Your Honor, I think just a few comments. I think the U.S. Trustee's Office respectfully sees the motion to dismiss as a gating issue. We did not file anything with respect to the motion to suspend because we think that it's truly within the realm of Your Honor to set the schedule for this case and that's what the real issue here is, the schedule, when things will be considered, when things will be done.

I have to comment, though, because last week we did the 341 Meeting of Creditors. It has not yet been concluded because there were certain information that Mr. Kim who wasn't the one who signed the schedules and statements, but Mr. Kim was not able to give us information that was missing from them.

And an important point that I think the Court should be aware of is that Schedule E/F, which is supposed to be the list of all known claimants or creditors of the debtor, does

not include any of the people who signed, who are represented by attorneys who signed a PSA prior to the petition filing date. And so Mr. Gordon and others on behalf of the debtor keep saying that the arguments by the TCC, he called it I think a very one-sided request, they represent a minority of the claimants, but the claimants that are on Schedule E/F that was submitted by the debtor that represents all creditors they know of as of the filing of the petition at 4:00 on April 4th does not include any party, does not include any individuals who are represented by attorneys who signed PSA prior to the filing date.

And when I asked Mr. Kim why that was, the only response I could get out of him was, and I'm paraphrasing, Your Honor, here, I don't have the transcript yet, was that, well, we figured those people would be identified in 2019s. That's not an answer, Your Honor. If the debtor believes that these are creditors and claimants and that they knew about them as of the filing, they should have been on Schedule E/F. I don't know why they weren't, Your Honor.

And it also is concerning to me, just there's one correction though and I just got reminded of that. I'm very thankful for texting. I was reminded by one of my co-counsel that the Onder Law Firm is on Schedule E/F because they started in LTL1 as a group of claimants and then since then and I think there might be some from (indiscernible) Nachawati since then.

Both of those firms have signed PSAs prior to the second petition.

But of great importance, Your Honor, is Mr. Watts who represents a significant number of these new claimants that debtors have brought to us. We're not on Schedule E/F, and there are other firms, I don't have the list in front of me. So, Your Honor, I don't know why that is, but we have debtor representing to the Court that they're claimants and that they have different interests but they're not on the schedules recognized by the debtors as claimants.

And I'm not saying they should update them. to give us information on people identified after the petition date, but the Code says they're supposed to give us everybody they know of as of the petition date. And they did not do that in their schedules and statements.

And if indeed there is anything untoward that people believe has been done by the Tort Claimants' Committee, that's an issue to raise with the U.S. Trustee's Office, Your Honor. I have seen nothing. The Tort Claimants' Committee is representing the interests of all creditors of the estate. There may be some creditors, I don't know if they are or aren't creditors because the debtor doesn't list them as creditors. But there may be others that have different viewpoints.

The U.S. Trustee is still looking into the issue of a 2019 statement and an ad hoc committee of counsel as opposed to

an ad hoc committee of creditors or claimants who hold different positions. And, Your Honor, I think it's a distinction of great difference. I don't think it's a distinction of no difference.

So, Your Honor, I just wanted to say that for the record because we've heard about the majority of the claimants feeling one way. And once we had the time to sit down with Mr. Kim and go over the schedules and statements, they don't reflect that. So I just wanted to bring that important point to the Court's attention, but to start where I -- to end where I began, which is that we do believe the motion to dismiss is a gating issue that needs to be taken up by the Court sooner rather than later. Thank you, Your Honor.

THE COURT: Thank you, Ms. Richenderfer.

Mr. Malone?

MR. MALONE: Good morning, Your Honor.

Robert Malone of Gibbons representing the states of New Mexico and Mississippi who are parties in interest to these proceedings.

While we did not file any formal joinder in this case to belabor the Court with any more paper, but since Mr. Gordon has decided to make it an issue that it's just the Talc Committee who is supportive of going forward first with the motion to dismiss, I felt compelled to rise in support of the Talc Committee. This is not a situation of "beat the clock,"

but rather a question to Your Honor of judicial economy. It's been well over two years and it doesn't seem to be urgent that now all of a sudden a plan process must go forward on a rapid track.

Judicial economy in this case would dictate that the motions to dismiss would proceed first because if the disclosure statement and plan were to proceed at the same time until the Court has made a decision one way or the other on the motion to dismiss, it could all be rendered moot, whether it be by way of the appeal process or a dismissal of the entire case.

So if we're going to look at the energies that are being put into the case, I think there should be focused in a very (indiscernible) time. Next month we have hearings already set up in June. It's not like they're out in July or August. I think we'll have a determination in very short order whether this case is going to proceed or not.

Thank you.

THE COURT: Thank you, Mr. Malone.

Before I go back to counsel who have already spoken, let me just bring in Ms. Jones.

MS. JONES: Good morning, Your Honor.

THE COURT: Good morning.

MS. JONES: Laura Davis Jones of Pachulski Stang Ziehl & Jones on behalf of Arnold & Itkin.

Your Honor, like Mr. Malone, we have not filed a

response in connection with this motion, but now that Mr. Gordon has opened the door and is speaking he says for all claimants, again, Your Honor, the Arnold & Itkin firm does not agree with his path. But, indeed, Your Honor, we think the motion to dismiss is case dispositive and we need to start there.

Thank you, Your Honor.

THE COURT: Thank you, Ms. Jones.

Mr. Satterley?

MR. SATTERLEY: Yes, Your Honor.

I just want to respond to both Mr. Gordon and the Ad Hoc attorney.

First of all, the argument that we represent, we who oppose represent a minority of claimants, there's no real evidence of that. That's just attorney argument. Your Honor presided in LTL1, and you had the motion to dismiss trial last February.

THE COURT:

So that's the Court's outlook. And at this point, before we proceed to the other discovery issues, let me hear from parties. Although you ruled against my position and what I thought was proper, you handled it appropriate. You did the right thing. We didn't get to mediation and all the other things until after that trial occurred and after Your Honor

certified it to the Third Circuit.

I would urge Your Honor to do the exact same thing you did in LTL1, have the trial on the motion to dismiss. If Your Honor decides not to dismiss it, which I think Your Honor should dismiss it as a bad-faith filing, Your Honor should once again certify the matter to the Third Circuit.

With regards to the ad hoc argument that we should rush into another mediation, I participated on all five days of mediation in LTL1 --

THE COURT: I think we're losing, at least I am losing Mr. Satterley.

MR. SATTERLEY: (Audio interference).

THE COURT: Mr. Satterley, unfortunately, I think we're losing you.

Let me turn to --

MR. SATTERLEY: Can you --

THE COURT: I can hear you.

MR. SATTERLEY: Can you hear me now?

THE COURT: I can, yes.

MR. SATTERLEY: I turned my video off. I apologize. Maybe my internet -- all right. So I'll conclude, Your Honor, that just as Your Honor did in LTL1, the motion to dismiss trial should occur first. If anything other than the motion to dismiss, there should be an investigation into the largest fraudulent transfer in U.S. history.

With that, I'll submit, Your Honor.

THE COURT: All right. Thank you.

Mr. Thompson and then I'll go to Mr. Molton.

MR. THOMPSON: Thank you, Your Honor.

I did want to highlight -- I wanted to highlight what the Circuit said in denying the mandamus petition. And so this is on May 9th, "In order to allow the Chapter 11 proceedings of LTL Management to continue on the expedited basis set by the Bankruptcy Court for the District of New Jersey and recognizing that the writ of mandamus is a drastic and extraordinary remedy and there are other adequate means for the petitioner" -- meaning the Committee of Claimants -- "to obtain the relief it seeks, the public petition for writ of mandamus of talc claimants is hereby denied."

And they mention the expedited basis of the bankruptcy case, and the reason they probably did that was because the debtor in opposing mandamus said that the trial for motion to dismiss was going to be June 12th. And when we were arguing the certification for immediate appeal to the Third Circuit last week, the debtor said, essentially their argument was, well, the motion to dismiss trial is going to be soon and that's going to be appealed, so let's appeal them both together. And that was an argument that made sense to Your Honor.

And so it doesn't matter how many claimants there are

that allegedly support this plan, if Mr. Satterley says there's zero evidence of that, which clears that the Ad Hoc Committee represents lawyers that say they represent a lot of claims and there's zero evidence of that. And there's zero evidence that those claims have any value in the tort system.

So, of course, the Ad Hoc Committee of Supporting Counsel is in favor of a bankruptcy plan. They want to mediate because they've got a bunch of claims that probably are worth zero in the tort system. And my firm filed a motion on that issue over the weekend.

The way that things are normally done in bankruptcy is that you have a good-faith debtor which we don't have here. And so before we get to mediation, before we get to any of this other stuff that the debtor is trying to cram down on everybody, the Court first has to do, as Mr. Satterley said, that you correctly did last time. You have to address the threshold jurisdictional issues, and we would urge you to do that first. Thank you.

THE COURT: Thank you, Mr. Thompson.

Mr. Molton?

MR. MOLTON: Yeah. Finishing up, Your Honor. Thank you for everybody for participating.

First of all, I have to applaud Mr. Gordon. I expected his talking point on TCC representing minority of tort claimants, and he didn't disappoint me. I'm sure we're going

to hear that repeatedly as a way for them to bolster their defense to our legitimate objections to this bankruptcy, number one, and to what they're trying to do within it.

I was going to mention exactly -- a few of my reply points got taken by others. Ms. Richenderfer talked about the claim issue. Clearly, DHC represents law firms and Ms. Richenderfer talked about the debtor not having listed any of those or most of those purported claimants of those firms as creditors. As Your Honor knows and I'll just repeat it and then go on, it seems that many or most of the claimants represented by the Ad Hoc Committee have never filed lawsuits in the tort system and many of them apparently have diseases which are not tethered to any Daubert finding.

Needless to say, those are issues for a later day. But whenever you hear Mr. Gordon and his talking point, I'd like Your Honor to note my response so I don't have to say it every time.

Number two, Mr. Thompson, I don't think we're misaligned on our views. Clearly, we're going to look at the plan, the proposed plan, and I'm sure we'll have agreement that it's patently unconfirmable on many many grounds. But we don't have to deal with that now. All I was referring to Your Honor on estimation is before there's a solicitation to voters, those voters have to be known and we have to understand who they are, what they are, and the weight to be given thereto in light of

what I just said.

I'm going to challenge Mr. Gordon. He said -- his mantra from day one of LTL Number 1, talking point -- first talking point before his second talking point that I got to in LTL2, bankruptcy is the only forum. I'm not going to spend any time on that. All I'm going to do is see emphatically Judge Ambro's and his unanimous panel decision. He didn't agree with you, Mr. Gordon.

And my last point or second to last point was taken by Mr. Thompson. I was going to -- Mr. Gordon raised the mandamus, tried to use that as a way against our proposal for effective case management in this case. And Mr. Thompson quoted Judge Ambro's written text order there denying mandamus on the understanding of that panel that decided the mandamus that there will be an expedited proceeding here with respect to the motion to dismiss that will allow those issues should they get to the Third Circuit to get there, again, Judge, one of my favorite words, with alacrity.

Lastly, my colleague Mr. Hansen said a few things. Nobody here, Mr. Hansen, wants to engage in vitriol. And if you examine the history of LTL1, you can see from where the vitriol comes and I applaud Mr. Hansen. This case can proceed with vigorous advocacy without vitriol or that sort of condescending dialogue.

Mr. Hansen did mention in response to my question as

to whether the Ad Hoc Committee firms expected or even support what we see was filed yesterday. They quite candidly say they have issues with it. And I wonder if there's still a deal. But those are things for later on, Judge.

And those things later on need not even be addressed or time wasted on them if we get to dismissal first, as we should from a case management point of view, from the point of view of this Court's resources, from the point of view of the expectations of the world watching, now I'm quoting Your Honor, which includes the panel that wrote and endorsed the text order on the mandamus decision.

Thank you, Judge.

THE COURT: Thank you, Mr. Molton.

All right, folks. Bear with me.

So the Court has thought a lot about these issues. And in my ruling on the Committee's 305, I'll call it a 305 motion, I am probably or most definitely going to be touching on issues that are relevant to the scheduling of the motions to dismiss and the scheduling of the disclosure statement for the plan that's been filed by the debtor.

In bankruptcy, we often talk about the race to the courthouse. Apparently, that's not our concern here today. We have a race in the courthouse which has been brought by the parties, each seeking to move forward quickly with certain of their goals and proceedings and minimizing the time, at least

to the Court, that it would take to address the matters and then wishing to delay those that are not on respected parties' agenda.

I'm not going to delve into or try to read between the lines of the Third Circuit's text order on the mandamus petition. I think that's always dangerous. I'm not sure exactly the parameters of expedited. I know the Second Circuit in the Purdue Pharma appeal had an expedited appeal and that's been a year and, I don't know, 15 months. So who knows what expedited means these days.

I intend to proceed efficiently and as quickly as I deem reasonable. I make the commitment again that justice is not going to be run over by parties seeking to pursue their specific goals, that we have to have a process that makes sense. So in doing so, when I look at the motion under 305 and 105 for suspension of the proceedings, I don't believe it's necessary. The factors as outlined in the Third Circuit and briefed and noted in the Northshore Mainland Services case, the number one factor is the economy and efficiency of the administration.

I agree with, I believe it was Ms. Richenderfer who said the Court can address these issues through scheduling, and I can. The inherent power of the Court to manage its docket has been noted in much of the briefing, permits the Court to address the needs of the parties and the Court through

scheduling, not necessarily through a blanket suspension of the case.

So the motion will be denied, but the Court is taking into account the needs of the parties in further ruling.

In that regard, there are some important issues that need to be addressed as part of the motion to dismiss. There are important discovery issues, there are pretrial motions that I'm sure is coming. If the plethora of filings even for today is any indication with eight motions to dismiss and from reading the correspondence, potential for over a dozen witnesses including expert witnesses, to address the dismissal motion in a haphazard fashion just to squeeze it in is a disservice to the parties and to the Court and probably to any appellate tribunal reviewing the case.

So taking into account scheduling issues that were raised in the correspondence and also taking into account the assurances, and I'm going to address the plan process after, there is no need to squeeze in in the two days and one week in June and the following two days and -- two more days the following week the motions to dismiss and to create unnecessary time constraints on discovery that will be ongoing and motion practice relative to discovery, that burdens the Court in an already very time-restricted calendar.

There is no doubt in my mind that the complexity of eight separate motions to dismiss, the complexity of the

issues, the importance of the issues, the potential for discovery issues relative to the hearing warrant the compelling circumstances to move scheduling of this motion outside the restrictive constraints of Section 1112.

So it is my view that this trial on the motion to dismiss should go forward starting June 27th. It's a Tuesday through June 30th, which is the Friday. That's four separate days. I don't believe it's in everybody's interest to break it up over weeks.

And, Mr. Winograd, I see your hand raised. I'll get to you. I'll hear everyone.

But that would be -- the only option after that is probably the second week -- well, right after July 4th. But I see no reason why we can't complete it that last week in June.

Now it will not be an issue of having to erase the disclosure statement hearing because I have concerns with the disclosure statement process. My first concern is that the debtors requested that I appoint Ms. Ellis, for instance, as an FCR who has already represented to the Court and the parties that she did not take part in negotiations under any plan and she needs her own experts and professionals to make an informed qualitative decision on any plan.

So I don't know how we move forward so quickly and yet deprive her of the opportunity to examine the issues. Certainly, the creditor body's going to need to know whether

the FCR is supportive or not, the Court's going to need to know, and the parties are going to need to know.

But more importantly, I'm not convinced at this juncture that there should not be a competing plan process in the event this case continues subsequent to the motion to dismiss. I said this in the first case, and I repeat it. Successful confirmation of a plan is all about getting the numbers, 75-percent threshold. I don't know if the debtor and the debtor's plan, they can get to that point. I don't know if the competing plan can get to that point. But in essence, whether or not there are competing plans, it's really about alternatives to the creditors.

So I'm not making a decision that I'm going to terminate exclusivity at this juncture, but I will invite the Committee or any parties in interest to file a motion to terminate exclusivity because I want to be convinced that a plan that goes forward, whether there should be one or two plans going forward, because that will impact on scheduling certainly with respect to disclosure statements and plans.

I would invite, and I'm picking June 13th as a day knowing that the debtor in all likelihood needs to come in before the Court if they wish an extension of the preliminary injunction and to make the showing that was pointed out as being required by the Third Circuit in the prior opinion, to extend the injunction. So the injunction terminates on the

15th. It would make sense to hear the matter on the 13th.

And, also, I would invite the Committee to file a motion if they wish to pursue a competing plan and think it's warranted so that the motion gets filed. I would say file the motion by June 5th to allow the debtor to respond prior to the hearing. I think that's -- so that touches on how we're going forward with the disclosure statement.

My suggestion is to carry the debtor's motion scheduling disclosure statement hearing on the plan that's been filed to the 13th, as well. So I am not -- I am still pursuing and allowing a dual track, but I'm doing so in the Court's view in a manner that will make the most sense to allow the Court and the parties to gauge, should the case go forward beyond the motion to dismiss, how it goes forward and how creditors have the opportunity to express their opinions by voting.

When I looked at the proposed schedule and I know there could be modifications put forward by the debtor, it seemed clear that it would be just too oppressive and burdensome on the Court to have to address the plethora of issues relative to the disclosure statement at the same time conducting a trial on the motion to dismiss.

I think it's no secret that there are no attorneys who are shy about submitting filings. With eight separate motions, there's going to be voluminous filings, voluminous issues with respect to discovery. And it's inconceivable that

the Court could address those issues relative to the motion to dismiss and at the same time address valuation classification and the host of other issues relative -- and solicitation which is relative to a disclosure statement.

So that's the Court's outlook. And at this point before we proceed to the other discovery issues, let me hear from parties.

Mr. Winograd?

MR. WINOGRAD: Thank you, Your Honor.

Michael Winograd from Brown Rudnick on behalf of -- proposed counsel for the TCC.

Your Honor, we heard what you said, so I'm certainly going to -- I guess I can move one of my binders to the side for now, although I'd always been told that weeks were an eternity in bankruptcy time. But I did just want to raise one issue, Your Honor.

You mentioned conflicts that the debtor had raised and I think they had raised them before Your Honor proposed dates the last time. If you are contemplating as I think you just said the week of June 26th starting on the 27th, I believe, and I've indicated this in meet and confers, we will need to meet and confer because I believe we have a very serious witness availability issue that week. And we would just -- I would just want to note to Your Honor that we'll need to meet and confer on that.

I'm not aware of any other conflicts after that, but I do know that there's a serious conflict with a witness during that week.

THE COURT: All right. That's fair enough. I would hope you would meet and confer. I will tell you that I could block out time -- I know everybody wants to get to this sooner than later, but there's a July 4th holiday, so I can't put that the following week. I can block out July -- the week of July 10th as well.

But given that there is no race between the plan and disclosure statement as of yet, they are both proceeding in a reasonable course, I did not see the need to jam in four dates among two weeks in a scattered approach, which would still impose time constraints and time pressures on the parties and the Court.

So I'll wait to hear, but as of now, I'm prepared to block out the 27th, that time period. I can also block out the week of the 10th.

MR. WINOGRAD: Thank you, Your Honor.

THE COURT: Mr. Sponder?

MR. SPONDER: Good morning, Your Honor. Jeff Sponder from the Office of the United States Trustee.

Your Honor, the week of the 27th is a problem for the United States Trustee. Several of our attorneys, including myself, have planned vacations that week, and I just wanted the

Court to be aware of that. I believe July 10th would work, but, again, as Mr. Winograd said, I think we could meet and confer and see how we can resolve that.

I just wanted to advise you of that. Thank you, Your Honor.

THE COURT: I appreciate it. It is much easier to schedule these in a February when nobody is going anywhere, as we did the last trial. As we approach the summer, it is difficult, but that cannot take away from, as Mr. Molton noted, the importance of the issues, the complexities of the issues.

So the Court will try to be as flexible as possible, but if the parties cannot agree, we'll proceed as we can on the time scheduled.

Mr. Gordon?

MR. GORDON: Thank you, Your Honor. I appreciate all the information you just provided about scheduling. That's enormously helpful, given that -- the amount of time we've been expending trying to come to a consensus, so that's much appreciated.

And we'll obviously -- we're obviously happy to meet and confer with the other side to work through any scheduling conflicts that may exist with respect to that last week in June.

I did -- with Your Honor's indulgence, I did want to go back to the June 13 hearing, just to make sure we're all in

sync in terms of what you're contemplating. And what I heard, Your Honor, is that there would be three things potentially that would be heard on June 13th.

One would be any request by the debtor to extend the preliminary injunction beyond the June 15 date.

THE COURT: Correct.

MR. GORDON: The second would be any motion to terminate exclusivity filed by the TCC or any claimant, and that motion would need to be filed -- or those motions would need to be filed by June 5.

And then that would be as well -- June 13 as well would be the date for the hearing on the motion that was up today on schedule with respect to the disclosure statement.

So I just wanted to be sure, Your Honor, that I had that all correct.

THE COURT: That is correct.

MR. GORDON: Thank you.

THE COURT: I also -- for the benefit of the parties, I -- as counsel have noted, the issues are just too important to -- to create any uncertainty as to what issues need to be resolved.

And in that regard, with respect to the motion to dismiss, another reason I wanted to speak to counsel, beyond the issues that everyone has identified as far as cause and the lack of good faith being a foundation for cause and all of the

-- all of the arguments that will be presented as to whether or not the debtor has pursued and filed the case in good faith, I do want the parties to address one other issue briefing-wise. And I'd rather give it to you now than to surprise you.

It was addressed in my opinion, it was addressed by Judge Ambro toward the end of his opinion, but I'd like to revisit it. And it is whether or not -- because there are different factual scenarios in this case -- whether or not dismissal of a case -- well, strike that. Whether or not under 1112(b)(2) this case should not be dismissed in the interest of the bankruptcy estate and creditors, notwithstanding a determination that there is cause under 1112(b)(1).

If this court -- and I understand Judge Ambro read into or referenced the financial distress as a gating requirement even for 1112(b)(2). I read 1112(b)(2), and it only comes about -- and there are certain criteria that have to be met in 1112(b)(2), but there are -- I read it and it comes about notwithstanding a finding of cause to dismiss under 1112(b)(1), cause being lack of good faith.

So I'm not sure how financial distress can be the gating factor for 1112(b)(2). I welcome the opportunity to be educated by you all. But rather than address it without the benefit of your briefing, and under the facts scenario, I brought it up even in my initial determination of -- my decision with respect to the preliminary injunction.

One of the questions I had is if this case were to be dismissed, what happens to the causes of action and any claims that there could be or any efforts to secure the funding under either the 2021 funding agreement or the 2023 funding agreement. So I think that's part of the analysis as to what happens and whether or not this is such a case.

And I'm not -- I haven't made any determination, needless to say. But I'd rather have the benefit of the briefing than -- and give you all the opportunity to say it doesn't apply or it does apply. So in your briefing ultimately for the motion to dismiss, please address what it takes and historically I guess what other courts have -- may have viewed 1112(b)(2), I think. Hopefully I'm giving the right cite. It's not a commonly employed section of the Code.

All right. Now, we can move on. So I don't think we need to address the disclosure statement -- in fact, we can all take some time now and actually read what's been filed last night -- and address the discovery issues, I'll call them, the motion to compel and the motion for the protective order.

Mr. Winograd, will you be arguing the motions to compel and the cross motions?

MR. WINOGRAD: I will be, Your Honor. I believe there are several. There's a motion with respect to the use restriction in the protective order.

THE COURT: Right.

MR. WINOGRAD: There is a motion with respect to D, designating Exhibit A to the term sheet, and there is a motion to un-redact redacted information. I'll be arguing those, Your Honor.

There's also a motion with respect to the asserted common interest privilege as between LTL and J&J in connection with the 2021 funding agreement and 2023 funding agreement, and Mr. Jonas will be arguing that.

THE COURT: All right. Well, let's start with -- how about the protective order?

MR. WINOGRAD: Sure. Your Honor, again, Michael Winograd from Brown Rudnick on behalf of proposed counsel for the TCC.

Your Honor, the motions -- I know there's a lot going on, so just for the record, the motions and objections on this were at Dockets 439, 491, 492, and 510.

And there's really just one issue, Your Honor, and that is whether the protective order should have a general use restriction with respect to non-confidential information. In LTL 1.0, there was no such use restriction. The parties had agreed on that. The Court had ordered it.

In the preliminary injunction proceedings, the parties agreed to abide by the protective order in LTL 1.0, which, again, did not have any such restriction.

Now LTL wants such a use restriction going forward

for 2.0, for LTL 2.0. And they want a blanket use restriction for everything and to place the burden on a party to lift that use restriction.

As the cases that we cited make clear, Your Honor, in our motion, that literally just flips the burden and the case law on its head. LTL has offered zero authority for what they are asking. And, in fact, some of the cases they've cited for some general propositions decidedly cut against them.

The burden here is on the debtor. Again, it wants a blanket -- a blanket non-use restriction. And again, the case law, if you look at our brief at paragraph 4 to 5, says exactly the opposite. They need to show a particular need for protection, and that's the Cipollini case in the District of New Jersey, 1986. They need specificity. And the harm, Your Honor, has to be significant. It needs to be a particularized showing.

The debtors have offered really three reasons. One, they don't want the non-confidential information used in tort cases. Cipollini, Your Honor, outright rejects that as a basis. Not wanting litigation documents to be used outside of that litigation is not in and of itself good cause.

The discovery here was proper. The creditors here are plaintiffs in those tort cases. LTL and J&J are in this case because LTL filed this case based on their own machinations.

If the information discovered here properly that's non-confidential is relevant to those tort cases, it should be allowed to be used in those tort cases, and the case law makes that clear.

Number two, they argue -- LTL argues that while these documents may not be confidential, they ordinarily wouldn't have been disclosed to the public. Well, that's the nature of litigation, Your Honor. And, in fact, this litigation they started twice.

They argue, Your Honor, that they were -- next, for the third basis, that there were purported leaks to the media. Again, what was shared with Reuters were non-confidential documents. And I believe, if memory serves, LTL had made something of that and then later acknowledged that they had de-designated those documents and the issue went away.

But it's ironic. LTL and J&J have gone on a media campaign here. They have a website exclusively for press releases and statements about the case and participated in a CNN special.

This court has noted the importance of this case, that the world is watching. Well, when the world is watching, Your Honor, in an important case, the world shouldn't be prevented from seeing.

And I will note just very briefly, Your Honor, that the cases cited by LTL not only don't help them, but they

actually go against them. They only cite two cases for this proposition that a general use restriction with respect to non-confidential information is appropriate.

What they didn't tell the Court in their brief, and you had to dig a little bit to figure this out, is that in both of those cases -- in one case, actually, the opinion references it in a sentence. In the other case, you had to dive into the prior case to actually look at the information, and we provided that to the Court in our filing.

But in both of those cases, the use restriction was by consent of the parties. Nobody is arguing that parties cannot restrict use where the both agree that that's appropriate.

There is zero authority in LTL's brief for the idea that without consent you can impose this. And, in fact, they cited the Floor Design case where, again, the issue -- the protective order at issue was on consent. If you actually dive into that case, there was a similar defendant in multiple related cases.

In one of those related cases, it tried to impose this exact same restriction, but this time without consent. And that was the Insignia case. And what the Court said was no, we will not allow -- without consent, we will not allow a use restriction with respect to non-confidential information.

Again, Your Honor, there was no such restriction in

1.0. There was no such restriction in the preliminary injunction proceedings. There is no basis to impose such a restriction now. There has been no authority given to support restriction. And the only authority that has been given, if anything, cuts the other way.

Again, Your Honor, the world is watching. We can't put blinders on them and force them not to be able to see. Thank you, Your Honor.

THE COURT: Thank you. I'm going to regret ever using that phrase, "the world is watching," and I blame Mr. Molton.

So, do I hear from -- on behalf of the debtor?

MR. GORDON: Thank you, Your Honor. Greg Gordon on behalf of the debtor. And just so Your Honor knows, I'm going to handle this motion. The other two matters David Torborg, my partner, will handle those.

THE COURT: All right.

MR. GORDON: So, Your Honor, there is some good news, I suppose, with respect to this matter, which is I think the parties are otherwise in agreement as to the terms of a protective order to govern issues in this case.

And, in fact, in the second case -- and, in fact, it's just this one issue that's the subject of these pleadings that is not resolved. And I think that -- that Mr. Winograd has really overstated what we're seeking in connection with

this. I mean, he -- he referred to this as a blanket request, you know, made this sound, I think, more than it is.

And really what it is I think is a very balanced proposal. And, in fact, it picks up some comments that Your Honor made in a prior hearing. So the language at issue is in Section K of the protected order. It basically does say that the use documents produced in discovery, whether confidential or not, can't be used other than in connection with the bankruptcy proceedings.

But what's important about this -- and this was misstated somewhat, I think, by Mr. Winograd. It's not just a blanket prohibition. Instead, it basically permits parties to seek relief from the restriction simply by making a request to the producing party.

And then at that point, the burden shifts to the producing party. The producing party would be required if there -- if it's not willing to agree, it would have to file a motion to resolve the dispute with the Court. So this doesn't place the burden on the party seeking to use the information. It places the burden, excuse me, on the party seeking to protect the information.

And I think that's very, very important. This is an area where I think we agree that the Court has discretion in terms of provisions to be included with respect to discovery and pursuant to Rule 26(c).

Mr. Winograd has taken issue with the two cases we've cited that support the proposition that you can have this type of use restriction. But, in fact, there are two cases that we cited, both cases in which there were use restrictions like these -- or like this that were adopted.

And again, I would just simply point out that ours is not a blanket prohibition, as indicated by Mr. Winograd, but instead, has a balance to it that permits the parties to take an issue to the Court if they otherwise can't agree.

And, you know, we are concerned about two things in particular, one of which happened in the prior case, which was the disclosure of information produced in discovery to media sources for the purposes of conducting a media campaign against the bankruptcy. We'd like to avoid that this time.

You know, it's one thing if the media has available to it information that's in the public record in the case, but to us it's something different again. It's a different situation where there's private information produced in discovery that somehow finds its way into the press.

And probably the bigger reason, the bigger concern we have is a concern that information produced in discovery in this case will end up being used in tort litigation that's being permitted to proceed outside of this case.

And Your Honor is already aware from the evidence submitted in connection with Mr. Satterley's Valadez motion

that there was an express desire there in the Court to basically try the propriety of LTL-1 and LTL-2 in the bankruptcy case.

And we think that's problematic. We think that should be of concern to the Court that, you know, issues that are bankruptcy issues should be dealt with in the bankruptcy case, not in state court litigation. And we think that's a further reason for the use restriction.

So, Your Honor, we do think there's authority for this. We think it's appropriate, given the ability of the parties seeking to use the information to overcome this use restriction.

And I would just say, with respect to that, we think the way it's drafted here appropriately balances the interest of the parties in the sense that it provides -- it balances the interests of the debtor and J&J in protecting otherwise private documents from use in proceedings outside of the bankruptcy. It protects the interests of the TCC and the claimants in using information generated in discovery here and the other cases, if there's an appropriate reason for doing so.

And I would point out, Your Honor, that it's never really been entirely clear to us why this information needs to be used, since this is not information that generally goes to the merits of individual claims.

And then the third interest, Your Honor, that I think

that it balances is, frankly, Your Honor's interest in managing this case and your ability to ensure that information being generated in discovery here that's otherwise not public is not being misused in some way outside of the case that's potentially harmful to the bankruptcy case, potentially harmful to the plan process, or harmful to whatever issues are pending at the time.

So we would request that Your Honor approve the protective order with this use restriction that we have in there which, again, we think appropriately balances the interest of all parties.

THE COURT: Thank you.

MR. GORDON: Thank you, Your Honor.

THE COURT: Thank you, Mr. Gordon.

Mr. Thompson.

MR. THOMPSON: Yes, Your Honor.

Okay. So what they're asking you to do is to protect non-confidential information, what they're describing as private information. There's no basis to do that. There's no private document exception. J&J created this mess. They put all these documents in these matters at issue.

So let me give you an example. That motion to dismiss, Exhibit 161, that I've cited a bunch of times, it lists the total amount of money that they settled talc claims for. If they hadn't have filed for bankruptcy, I wouldn't have

been entitled to see that. But they did, and they put their settlements at issue.

And so what they're asking you to do is essentially enter a gag order that just facially violates the First Amendment for non-confidential information, right. And their reasoning is that the information that they apparently think they're going to be producing doesn't make them look very good.

Well, there's not confidentiality for information that makes J&J look bad. Okay. They have no legal basis to protect any of this information. There's no private documents exception. And we object to anything -- any sort of restraint on what is made available to the public in this matter.

Thank you.

THE COURT: All right. Thank you.

Well, my first inclination was to put in place -- I wouldn't call it a use restriction. It would be a notice restriction. I just don't see it as being necessary. We are dealing with non-confidential documents. They are discoverable. They are -- their use is permissible.

That doesn't mean that the debtor is foreclosed, or Johnson & Johnson, or any affiliated entity, or even a third party can't come before me on an emergent basis to raise the issue of whether there should be a restriction on its use if it's for an improper purpose or a bad faith purpose.

The Court will make itself available on a shortened

time. Everything in this case is filed on shortened time, so it should be no surprise. I don't see a need to have that restriction put into the protective order version 2.0 when it wasn't there the first time.

But the Court will remain available if there's any issues, and the Court can change its mind if it turns out that there is a piece of the provisions.

So, go ahead and enter into a protective order without that provision.

MR. WINOGRAD: Thank you, Your Honor.

THE COURT: Thank you.

MR. WINOGRAD: Your Honor, should we now -- which would you like to hear next? Would you like --

THE COURT: So --

MR. WINOGRAD: There's a motion to --

THE COURT: Why don't we address the term sheet issue.

MR. WINOGRAD: Sure. Again, Your Honor, this is Michael Winograd on behalf of Brown Rudnick, proposed counsel for the TCC.

Your Honor, the -- again, for the record, the motion to de-designate Exhibit A to the term sheet was -- the arguments were set forth in an April 25th letter to the Court. It was addressed in a May 3rd -- at a May 3rd conference where, if you'll recall, the debtor agreed to de-designate everything

but Exhibit A to the term sheet.

It was also addressed in our motion, Docket 440, just filed on May 5th. And last night -- late last night, debtors filed a response to that at Docket 136.

Your Honor, the entire term sheet was de-designated, except for this one exhibit. The one exhibit is labeled, and this is -- you know, I will read the title into the record, which I believe has been read previously and described previously, Agreed Injury Criteria and Discount Percentages.

It sets forth who will get how much. The term sheet, Your Honor, and its exhibit were negotiated between J&J and Mikal Watts, a plaintiff's lawyer, who was purportedly representing talc claimants.

It has been used, including Exhibit A, to solicit purported support for that term sheet that was -- came through the PSAs which attached the term sheet at Exhibit A.

Let me just make a few very quick points, Your Honor, because I know there's been briefing on this. There is nothing confidential about Exhibit A under the current protective order, either 1.0, which the same relevant terms carried over to 2.0 now as well.

There is an argument by LTL that it does, it contains confidential proprietary business information. This, again, was something negotiated between J&J and an outside plaintiff's lawyer. There is nothing proprietary about it. It's agreed

payment information in a plan.

Now, there are some generic cases that LTL cites in its opposition with respect to confidentiality of term sheets. This term sheet has been de-designated. We're just talking about the payment formula. And here, unlike any of the cases it cites, where you're talking about two parties, three parties negotiating a settlement agreement, that is not what's happening here.

This is a key part of a term sheet that is being touted publicly as having garnered support by thousands of claimants. There's been a campaign. It's been in the public eye. And all of that is because of J&J and LTL.

Number two, when they argue that it should be kept confidential, they rely on NDAs that were purportedly entered into between LTL on the one hand and the plaintiffs' firms on the other.

Signing an NDA does not make something confidential. But more importantly, Your Honor, they have outright repeatedly refused to produce the NDAs. They cannot on the one hand say these were all provided to parties subject to NDAs and on the other hand refuse to provide those actual NDAs.

We also believe, Your Honor, as we put in our brief, that we believe on information and belief that it was, in fact, shared with plaintiffs' law firms other than -- other than those who have signed NDAs.

We've reached out to Mr. Watts to confirm that. We reached out on April 24th. I understand from his law firm that he's traveling. We have not yet heard back. But we understand that they were provided to folks absent NDAs. But in any event, they will not provide the NDAs pursuant to which they claim that these were provided in the first place.

Their second argument is that the -- I think that Exhibit A was not introduced into the record, that it was marked as an exhibit. That is not true. We've cited the exact point. If you look at our Docket 440, paragraph 6 and 8, it was both marked and introduced into evidence. It is a part of the record, Exhibit A.

It was done so without objection. It was marked at a hearing. It was discussed at a hearing. There is no motion to seal pending, Your Honor. A judicial record, which this undeniably is, right -- and, again, at their brief on page 6, they say it was filed, but it -- it wasn't filed, but it was just introduced. It was filed as part of the record.

As an undeniable judicial record, it has to be de-designated. They would need to file a motion to seal, which we all know is a high bar. Once it is a judicial record, the public is entitled to see it.

They cite one case, Your Honor, D'Amico, an Eastern District of Wisconsin case that they say agrees to designations, confidentiality designations with respect to term

sheets. Again, that case explicitly -- and I think they even note this in their parenthetical -- was dealing with a document not only that had not been filed, but where the Court said there's been no indication that it would ever be filed.

Next, Your Honor -- and, again, I believe the absence of the NDAs alone warrants de-designation. The fact that this is a judicial record alone warrants judicial -- warrants de-designation.

In addition, it was discussed in open court. The exact number that was derived from it, with respect to Mr. Valadez, was stated in open court, without objection. And J&J's counsel then gave a settlement number, a confidential settlement number, that was proposed during settlement negotiations and said that number also tracked from the formula.

They have touted this plan publicly, Your Honor. They have touted the total payment. They've said it fairly compensates victims and that they have support for it, but they simply won't disclose who is getting paid how much.

They can't do that, Your Honor. The term sheet has been de-designated. Exhibit A should go along with it. There's simply no basis to keep it confidential. And to the extent there ever was, it has to have been waived.

I will add one other point, Your Honor. The plan itself has now been made public. It provides a formula, and

that's public. There's now even less of an argument to conceivably keep what apparently was a draft formula that was shared and used to solicit support confidential when the final is out in the public. There won't be any confusion, as debtor claims. The plan is the plan, but we are entitled to de-designate whatever that draft of that -- of that formula was.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Winograd.

Mr. Torborg. And if you would address, Mr. Torborg, the last issue, because I haven't looked at what was filed, the plan and disclosure statement.

Are the terms that appear in the term sheet -- have they been included in the plan or disclosure statement?

MR. TORBORG: Can you hear me okay, Your Honor?

THE COURT: Yes.

MR. TORBORG: This is David Torborg.

THE COURT: Yes, I can.

MR. TORBORG: Great. You know, as it happens, I was going to start with that issue. And we think it actually supports the debtor's position here.

The terms that are in Exhibit A are really a precursor to the TDPs that are included as Exhibit M of the plan. There are some differences between those TDPs and the terms that are in Exhibit A.

So we believe that disclosing Exhibit A would just

cause confusion that is completely not necessary here. The need that they've cited in their brief, that the public needs to see these terms so they can decide whether to support it, that's been rendered moot, because the terms are -- the terms that the plaintiffs will be asked to decide upon are the TDPs. So there's really no need now to disclose the terms of Exhibit A.

To the extent that there is some other need to see the terms of Exhibit A, the TCC has it. Any other party who wants to see it can sign a protective order and get a copy of it, any interested party that wants to get it. And I don't know why anyone would want to do that, because the terms are now in the TDPs.

Exhibit A is confidential. Movants spend most of their arguments in their briefing talking about waiver issues, which I'll get to in a second. But there really shouldn't be any serious disagreement that the terms that resulted from extensive settlement negotiations over a number of years are not confidential material.

Indeed, Mr. Winograd, during Mr. Murdica's deposition, objected to testimony about the term sheet, describing it as confidential settlement communications.

We have cited a number of decisions in our brief for the proposition that settlement discussions and term sheets are confidential. Against all of that, the TCC argues that Exhibit

A is not confidential because it sets forth the terms of a potential plan that is being actively marketed to lawyers. But Exhibit A was only shared with law firms willing to sign an NDA, which itself underscores its confidential nature.

Mr. Winograd argues today that we can't reply upon these NDAs because we haven't produced them, but it cites no authority for this novel proposition that a company must disclose all who sign an NDA before it can assert confidentiality over a document covered by it. There is no reason and no legal basis that we're aware of for such a requirement.

Now, Mr. Winograd speculates that on information and belief certain third-party plaintiffs' lawyers, including Mr. Watts, shared and discussed the term sheet with other plaintiff firms. It cites no evidence of this, and it had -- the TCC had the opportunity to depose Mr. Watts.

The only evidence in the record is that Exhibit A was shared under the protections of a confidentiality agreement. Mr. Watts specifically testified about that.

In any event, even if Mr. Watts did share Exhibit A with somebody else -- no evidence of that -- that says nothing about whether J&J or LTL waived any confidentiality. So we think that's just a non-issue.

And then finally, with respect to the claim that confidentiality was lost because the term sheet was discussed

in open court where the debtor filed the document in connection with a PI record, we don't believe either argument is correct.

First, no witness was asked about Exhibit A in particular. It was not shown in the courtroom. In fact, Your Honor might remember, last week there was a little bit of a dust-up with Mr. Birchfield when he had inadvertently showed the term sheet on the Zoom link in court.

So the debtor has been very cognizant of whether that document is getting out and they have talked to the public and has taken precautions against that.

As to the notion that it's a judicial record because it was filed with the Court, that does not automatically mean that it loses its confidentiality status. When the parties submitted their exhibits in camera to the Court, the debtor marked this Exhibit A as confidential and there was no challenge to that at the time.

None of the cases that the TCC has cited support the notion that filing a document into the record automatically defeats confidentiality protection.

And finally, you know, courts have long recognized the sensitivities around disclosure and settlement negotiations, given the likelihood of public disclosure will chill, you know, settlement negotiations. I think the same is true here.

And finally I would note, on the topic of judicial

records, that nothing in the Court's decision on the PI appears to rely at all upon the terms of Exhibit A. So we're not dealing with a situation where the public is being deprived of information that was material to its decision.

So for all those reasons, we think the motion should be denied. And unless Your Honor has any questions, that's all I have.

THE COURT: All right. Thank you, Mr. Torborg.

MR. TORBORG: Thank you.

THE COURT: Ms. Richenderfer?

MS. RICHENDERFER: Thank you, Your Honor. Linda Richenderfer, counsel for the U.S. Trustee.

Your Honor, I'm just observing something that I hear developing throughout this morning's conference. We have -- debtor is arguing that their plan is supported by an overwhelming majority of claimants. And Your Honor has raised the issue of the application of 1112(b)(2)(a), which requires that the -- there is reasonable likelihood that a plan will be confirmed.

And now we're hearing that the term sheet, which is the basis of debtors claiming that a majority of the claimants support their plan, that the term sheet does not match all of the TDPs, which they say is the portion of the plan we should be looking at.

And so, Your Honor, I think what's happening is that

they're putting at issue -- I think the debtors are putting at issue what is in the exact term sheet, because if they're going to come into court for the motion to dismiss and continue to argue a majority of people support this, and the majority of people agree to a term sheet that we're now told is different than what's in the plan, and we even heard from counsel for the Ad Hoc Committee that there are some differences and they're looking into them, then I think that the term sheet, if for no other reason, has been put at issue by the debtors and for that reason alone should be disclosed.

I know that the U.S. Trustee's office has never seen it. And I know that when questions were asked during the depositions I attended for the preliminary injunction, the claim -- privilege, common interest, settlement discussions, various different objections were made depending on who was defending the deponent.

But I think that it has now been put issue. So, as I said, regardless of what occurred in the past for the preliminary injunction, it's at issue now, I believe.

Thank you, Your Honor.

THE COURT: Thank you, Ms. Richenderfer.

Mr. -- before I go back to Mr. Winograd, Mr. Satterley.

MR. SATTERLEY: Yes, Your Honor, very briefly. Joe Satterley, Kazan McClain Satterley & Greenwood.

I filed a brief on this issue. The document was introduced into evidence. I argued from it in closing arguments and specifically said -- told Your Honor what Mr. Valadez would be entitled to under the plan. There was no objection. $50,000 is all you would be entitled to under that term sheet. There was no objection by the debtor or by anybody else.

Under the case law submitted and the brief that we submitted, this is a judicial record. It must be deemed to be non-confidential. It's not a secret.

And I would echo what the U.S. Trustee just said. I looked at the plan last night and this morning, and to me it looks substantially similar to the term sheet, but now that the debtor says there's differences, the public has a right to know what's the difference between all these alleged 60,000 or 70,000 people's agreements, which I don't really believe has occurred, and this what's now been submitted.

We have a right to know, the public has a right to know, the media has a right to know, the women and men that are going to vote on this have a right to know. So I would strongly urge Your Honor to deem this to be non-confidential and allow this -- allow everybody to see both the term sheet and compare it to the plan that was filed last night.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Satterley.

Mr. Thompson.

MR. THOMPSON: I'll be brief. Everyone's touched on all the good stuff.

I would just point out -- I would just point out that the sole basis that the debtor and the ad hoc group are telling you, Your Honor, the Court has jurisdiction over this matter is based on votes. And it's based on the credibility of Mr. Murdica and Mr. Watts and Mr. Pulaski and everybody else that was involved in negotiating Exhibit A and now this plan.

And the public needs to be able to determine what differences, if any, exist between Exhibit A and this current iteration of the plan, which, depending on who you talk to and what motion they're arguing, is either binding on everybody or is subject to negotiation.

All of this needs a lot of sunlight, Judge. Thank you.

THE COURT: Thank you, Mr. Thompson.

Mr. Winograd.

MR. WINOGRAD: Your Honor, I will -- I will start where Your Honor started and where Ms. Richenderfer left off.

As you heard from counsel, they have now published effectively Exhibit A. The numbers are a little bit different. The formula is a little bit different, maybe. I haven't done a close compare. But the numbers are now public, and the issue has been made public. There is absolutely no basis to withhold

the prior iteration of that, what Mr. -- what counsel called a precursor.

In addition, Your Honor, it's not entirely moot, because those numbers remain the numbers that we were told were supported by these 60-plus thousand unfiled claimants.

Your Honor, with respect to the NDA, Mr. Torborg raised -- said, you know, well, we only did it pursuant to NDAs. Again, NDAs don't create confidentiality. And with respect to the legal basis that you have to produce the NDAs, I can't understand how -- what basis there would be to assert a confidentiality based on a document and then refuse to produce the actual document so folks can verify it. That, to me, just is -- is absurd, Your Honor.

Your Honor, it was mentioned in open court. The numbers were given. We were told those numbers tracked with the formula. And that happened twice, once by Mr. Satterley as he again explained, and once again, as I mentioned, by counsel for J&J in public.

Mr. Torborg argued that if Mr. Watts shared the document with people who didn't sign the NDA -- and, again, we don't have -- we understand that on identification and belief. We're waiting for a response from -- you know, we've been waiting a couple of weeks for a response from Mr. Watts. It is equally his document as it was J&J's. There was a document that apparently J&J and Mr. Watts negotiated and put together.

The point on judicial record, we're not arguing judicial records are automatically, you know, accessible to the public. But there is a strong presumption, as we noted in our briefing, and a motion to seal is required. We all know the high standard on a motion to seal. And that just simply hasn't been met. It's a judicial document. It's been discussed twice in open court. There's just no basis to keep it confidential.

With respect, Your Honor, to settlement negotiations, again, these are not generic settlement negotiations. This is an actual term sheet that has been touted publicly in an important case as having garnered support and as providing fair compensation to the victims.

There's simply for five or six different reasons, including the fact that it's subsequent iteration is now public and at issue, there are five or six independent bases to de-designate Exhibit A.

Thank you, Your Honor.

THE COURT: Thank you, Counsel.

Because the information is available -- to the extent it comports with what's listed in the term sheet is available as part of the filing by the debtor last night or early this morning, the public has access to such information.

The concern I have is that there is a substantial risk of prejudice and confusion. This is not the document that is going by -- that this court has approved to go out to the

public. There's been no -- we're far away from approving a disclosure statement with terms that the public can view and consider. These terms arise from settlement discussions that can and in all likelihood will change as the process goes forward.

Indeed, as I've indicated, the Court does not have the benefit of even a view or an opinion put forward by the future claims representative as to the merits of any numbers included in any matrices or the like.

It would simply prejudice and cause confusion to have multiple sets of numbers available. The information is available in discovery, consistent with protective orders. No parties are being disadvantaged. And it doesn't mean that once the disclosure statement process moves forward, if it does move forward, and we have to see in what context, that the document is inappropriate to be de-classified as far as confidentiality.

So I am not going to order the removal of the designation at this time, but will revisit it as part of the disclosure statement process. Also, I don't see it as necessarily relevant to the motion to dismiss. The actual dollars per victim, depending upon nature of injuries and credits to be accorded, don't touch on the issues relative to financial distress or the like.

And I'm happy to reconsider as we progress going forward.

Mr. Satterley?

MR. SATTERLEY: Yes, Your Honor. I just want to clarify so the record is absolutely 100 percent clear.

The term sheet that we're talking about here is the only thing that remains confidential from the PI hearing and the discovery that we had, based upon Your Honor's previous ruling, correct?

THE COURT: Correct.

MR. SATTERLEY: Okay. Thank you, Your Honor. That's all I had.

THE COURT: The exhibit -- I believe it's the exhibit to the term sheet.

MR. SATTERLEY: Yes, the exhibit to the term sheet. Yes, Your Honor. Thank you, Your Honor.

THE COURT: All right. Thank you.

Next matter, the --

MR. WINOGRAD: Your Honor --

THE COURT: Mr. Winograd.

MR. WINOGRAD: Your Honor, this is Michael --

THE COURT: Yes.

MR. WINOGRAD: This is Michael -- I'm sorry, Your Honor.

THE COURT: No, go ahead.

MR. WINOGRAD: We've got the motion to unredact and we have the motion with respect to the common interest

privilege, whichever Your Honor would like to hear first.

THE COURT: Let's address the motion to -- I'm sorry, te common interest issue.

MR. WINOGRAD: Sure. And for that, Mr. Jonas is going to handle that for us, Your Honor.

MR. JONAS: Good morning, Your Honor. Jeff Jonas from Brown Rudnick.

THE COURT: Good morning, Mr. Jonas.

MR. JONAS: A pleasure to see you again. For the record, Your Honor, Jeff Jonas, Brown Rudnick, proposed counsel for the Talc Claimants Committee.

Your Honor, we are seeking an order compelling the debtor to produce documents relating to the termination of the 2021 funding agreement.

The debtor asserts that all such documents are subject to a common interest privilege between the debtor and JLJ -- I'm sorry -- Johnson & Johnson, J&J.

As the Court is aware, the debtor and J&J terminated the 2021 funding agreement allegedly because it became, quote, void or voidable, close quote, when the Third Circuit issued its opinion in January 2023 dismissing the first bankruptcy case.

Your Honor, I won't restate all of the arguments in our motion, but instead will try to reply to the arguments made in J&J's response in objection and the debtor's objection, both

filed late yesterday or last night.

First, I'd like to make sure parts of the record here are very clear. Johnson & Johnson, at least twice in its reply, states, quote, The value of the prior funding agreement was the amount of the liability minus the value of the debtor, not $60 billion, and that did not change with the new agreements.

Your Honor, this -- this also shows up in the debtor's reply or objection. This is tortured and misleading. At the preliminary injunction trial on the 18th of April, and among other places, page 66, line 18, through page 67, line 15, Mr. Kim confirmed that J&J's total funding agreement exposure went from $60 billion to $8.9 billion.

Also, both J&J and the debtor have refused to answer questions about termination of the funding agreement. For example, Mr. Kim, at his deposition on April 14th, page 83, line 1, through page 84, line 4 -- I'd just like to read this into the record, Your Honor. It will be brief.

"The parties to the funding agreement are LTL, right?

"Answer: Yes.

"Question: Johnson & Johnson Consumer, Inc., right?

"Answer: Yes. You're talking about the old --

"Question: Yeah, the old funding agreement and Johnson & Johnson, right?

"Answer: Yes.

"Question: So did you ever discuss with those parties whether they thought the funding agreement was void or voidable?

"Answer: There were discussions among counsel for those parties.

"Question: Well, let me ask you, was Johnson & Johnson or JCI, their view that the agreement was void or voidable?"

Ms. Brown interposed, "I think that's going to implicate legal advice and would cause you to speculate as well, so I object.

"Can you answer that question without divulging information of other lawyers that you may also have a privilege with under the common interest?

"Witness: No, but --

"Ms. Brown: Okay. Then I'm just going to instruct you not to answer."

Similarly, Your Honor, Mr. Haas at his deposition on April 14th, page 128, line 3 through 23.

"Question: Mr. Haas, who at Johnson & Johnson had any role in agreeing to terminate the 2021 funding agreement prior to April 4th, 2021?

"Ms. Brown: Well, that assumes facts. I object, lacking foundation. And to the extent you have that knowledge independent of your role as worldwide head of litigation, you

can answer. If not, I object and instruct.

"Answer: That is covered by an implicated attorney/client privilege and the work product protection.

"Question: Mr. Haas, are you aware, yes or no, of whether J&J and LTL agreed to terminate the 2021 funding agreement while the first LTL bankruptcy was still pending?

"Ms. Brown: I object, privileged. I instruct him not to answer."

I thought it was important to put these into the record, Your Honor, to give some context to what we're talking about today.

The Committee has been unable to get at the facts surrounding termination of the 2021 funding agreement, the document which in its first bankruptcy case the debtor extolled the virtues of because it would ensure fair and equitable recoveries of all talc claimants.

I think it's also important, Your Honor, to point out that the debtor and J&J carefully planned and instituted using only lawyers in connection with the termination of the funding agreement so as to strategically be able to assert privileges and joint interest to shield any discovery as to what happened here, all to the disadvantage of their creditors, victims, and the TCC.

Of course, Your Honor, the debtor and J&J selectively choose when to use privileges and common interest as a shield

and when to do so as sword. For example, notwithstanding opposing production of documents relating to termination of the funding agreement, the debtors have confirmed in writing that at the motion to dismiss trial, they will put forth Mr. Kim as a witness to testify, among other things, about, quote, the material risk of unenforceability of the 2021 funding agreement on and after January 30th, 2023, close quote.

And they've also told us they'll put forward Mr. Haas, who will testify about, quote, the position of Johnson & Johnson concerning the unenforceability of the 2021 funding agreement on and after January 30th, '23, close quote.

Your Honor, with that background, the common interest is inapplicable here where the parties in question, here the debtor and Johnson & Johnson, are adverse to each other. Johnson & Johnson and the debtor argue that they were not and are not adverse to each other because they are aligned against a, quote, common enemy, close quote.

They actually used those words, Your Honor, in referring to talc victims and creditors. Again, a common enemy. Yet, they missed a step here, Your Honor. When the Third Circuit issued its opinion and, according to them, the funding agreement became void or voidable, the debtor and Johnson & Johnson were, in fact, adverse, effectively on opposite sides of the "V."

J&J wanted to eliminate or minimize its exposure, and

the debtor, a fiduciary to talc victims and its creditors, should have wanted to maintain or maximize Johnson & Johnson's exposure or liability. Thus, there could be no common interest, at least at that point in time.

Even if they were trying to negotiate a resolution relating to termination of the funding agreement, until that was done, they were clearly on opposite sides of the "V" and clearly adverse.

Your Honor, I would actually reference a case cited in Johnson & Johnson's reply, the Leslie Controls case, 437 B.R. 493, a Judge Sontchi case out of Delaware in 2010, at page 501, where the Court said, "The common interest exception does not protect information exchanged among parties simply because they are negotiating toward what they hope will be an agreement. During negotiations, adverse parties have no common interest and, indeed, their interests are in conflict. Each party wants to get the best deal from the other. And to the extent that one is successful in that goal, the other suffers. And as a result, until an agreement is actually reached, it is not objectively reasonable for a negotiating party to believe that a communication of privileged material to other negotiating parties was confidential and thus protected by the common interest privilege, because while negotiating parties may all have hope for a successful outcome, each side is representing its own interest and a successful outcome was not

assured."

And of course, Your Honor, as set forth in Teleglobe, 493 F.3d 345, 2007, Third Circuit Court of Appeals, particularly by Judge Ambro, at page 378, stated, "It is not the case that parents and subsidiaries are in a community of interest as a matter of law."

He goes on to say that, "A broader rule would wreak havoc."

I would also like to point out, Your Honor, that here we are completely in the dark. We don't even know the who, what, where, or when regarding termination of the 2021 funding agreement. How can we effectively respond to assert privilege and common interest assertions? We can't. We have no privilege logs. The debtor has not produced any documents for in-camera review.

Your Honor, this came up in the Leslie case, which I've already cited, where both of those were required. And while, Your Honor, I think on its face, and as I've -- I hope I've demonstrated, there should be no common interest permitted here.

If that's not your view initially, I would urge the Court to require that privilege logs be produced and that all relevant documents be produced to the Court for in-camera review.

My last point, Your Honor, I want to make is even if

a common interest did apply, which it doesn't, we believe that the crime fraud exception is applicable here, because these communications were made in furtherance of a fraud.

Here what has been referred to, I think even by the Court, as potentially the largest fraudulent transfer in U.S. history. We cite the Chevron case, 633 F.3d 153, a 2011 Third Circuit Court appeals case, Your Honor.

Your Honor, for all of those reasons, we urge the Court to compel production of all documents responsive to our request which we've made relating to the termination of the 2021 funding agreement.

Obviously, Your Honor, we would hope that this would -- this order would also extend to depositions, which will follow production of the documents.

Thank you very much, Your Honor.

THE COURT: All right. Thank you, Mr. Jonas.

The Court needs to take a 10-minute break, or else my staff will walk out on me. So before I turn to Mr. Thompson and then to the debtor, it's 12:03. Why don't we come back at 12:15. Thank you.

(Recess)

THE COURT: Okay. It's like a TV production. We're back. And if I recall, Mr. Thompson, you had your hand up, before I go to debtor's response.

MR. THOMPSON: Yes. Thank you, Your Honor. So what

we're seeing here in this assertion of common interest privilege is a complication of what happens when you try to overcome the tort system without the obligations of a bankruptcy filing. So I'm going to quote to you from a portion of the ABI seminar that I've attached as an exhibit many times.

This is page 27. This is Mr. Gordon speaking:

"I've heard judges say that the problem is that you've got the affiliates and the debtor is never going to enforce the funding agreement. So that's the problem. You have the funding agreement, but the claimants are now a step removed. The debtor isn't going to enforce it."

This is page 28, line 5:

"And my reaction to that is that's the -- that's kind of an insult to the bankruptcy judge. So we're there in the bankruptcy court. We're a debtor in possession. We're a fiduciary. We elect not -- the other side breaches. We elect not to enforce. Is the bankruptcy judge going to not let us get away with that?"

So that's April of 2022. Then before the Third Circuit, Mr. Katyal, who you recall, very prominent lawyer and advocate, before the Third Circuit at page 65 -- this was attached to, I believe, my opposition or joinder to this motion. "This funding agreement" -- this is Mr. Katyal to the

Third Circuit:

"This funding agreement gives the entire value of JJCI, the entire value, 61 billion, free and clear to the potential claimants so that the entire pot of money is available."

Going down to the next paragraph:

"The funding agreement -- this is quite important to our argument. The funding agreement itself bars that. Or if it occurred, if there was -- if there were any payments to J&J or to shareholders or anything like that, distributions, all of that increases the $61 billion pot. 61 billion is only a floor, not a ceiling."

And that's what he said. It's only a floor, not a ceiling. $61 billion. And as Your Honor recalls, Mr. Gordon on February 18th and Mr. Katyal to the Third Circuit said that the funding agreement applied inside and outside of bankruptcy.

So then in January we have an opinion by Judge Ambro that says at page 109 or 108 -- at the end of page 108:

"From these facts presented by J&J and LTL themselves, we can infer only that LTL at the time of its filing was highly solvent with access to cash to meet comfortable its liabilities as they came due for the foreseeable future."

Skipping ahead a little bit. Further on, on page

109. And importantly, Your Honor, this was a part of the opinion that they added specifically on March 31st, four days before J&J filed its second bad-faith bankruptcy. "This all comports with the theme LTL proclaimed in this case from day one. It can pay all current and future claim talc claim claimants in full."

And then at the next paragraph: "We take J&J and LTL at their word and agree. LTL has a funding backstop not unlike an ATM." Your Honor is familiar with that language.

And so what's happened here is that J&J tried to outsmart the Bankruptcy Code. And their arguments to you in February of last year and to the Third Circuit in their briefing and at oral argument was that the funding agreement cured all of the allegations of a fraudulent transfer. There's no fraudulent transfer, because the funding agreement exists inside and outside of bankruptcy. And the funding agreement is worth at least $61 billion.

So then they lose on that ground. So now they got a problem, because they've got a funding agreement that's worth 61 billion, and the Third Circuit has now found that they filed in bad faith. So now they've got to commit some fraud.

Now, 524(g) is not a menu choice for billionaires. So J&J created LTL Management solely -- the sole purpose of LTL Management's existence is to buy a channeling injunction for its non-debtor controlling parent, Johnson & Johnson.

So after the Third Circuit takes J&J at its word, takes LTL at its word, takes Mr. Gordon at his word that these funding agreements are enforceable, the bankruptcy judge will not allow these funding agreements to not be enforced or if we try to not enforce them, which is exactly what's happening here. J&J under your -- or LTL under your jurisdiction has committed fraud, Your Honor. They did. They're trying to give away the funding agreement so they can generate financial distress. And they're doing it in your courtroom under your jurisdiction.

And so the talc creditors are entitled to every communication that took place between LTL and J&J that show this fraud. J&J cannot get a channeling injunction through LTL. And its only argument in opposition is essentially we've got a common enemy. The common enemy are plaintiffs represented by people like me who actually have cases that are worth something more than zero in the tort system which the Ad Hoc Committee cannot say.

The Ad Hoc Committee doesn't say how many claims they represent. And for all we can see, all of these cases that they claim they represent are worth zero in the tort system. They're not bringing them in the tort system.

So what we see here is J&J buying off lawyers. The kinds of lawyers that they bashed February before you in your motion to dismiss trial they're now very eager to make a deal

with.

So they've committed fraud. The claimants have to be able to see it. And just saying that, well, we have a common enemy -- the people that we poisoned, they're our enemy. And we have a common enemy, and because we have a common enemy, you can't see how we committed all the fraud. Your Honor, it's not right.

And this Court has not always agreed with my opinions on things, which I appreciate. But this is crystal clear. Communications between J&J and LTL under your jurisdiction are discoverable. The claimants are entitled to see them.

There is billions and billions of dollars that LTL gave away after they were leaned on by J&J. And it's not right. We have to be able to investigate it, unless, of course, Your Honor would dismiss the case, which I would happily accept as well. Thank you.

THE COURT: Thank you, Mr. Thompson.

Mr. Torborg?

MR. TORBORG: Good afternoon, Your Honor. Again, David Torborg, Jones Day, on behalf of the debtor. Before I get into what I was planning to say, I think I need to do a pretty important clarification in response to what Mr. Jonas was arguing. He was suggesting that we have withheld all communications, all documents that have anything to do with termination and replacement of the funding agreement. And

that's just not accurate.

John Kim and Mr. Haas both were allowed to testify that there were discussions about this issue, when they occurred, and what their positions were. Okay? What we have been withholding are privileged communications. Okay? That's what we're withholding.

And this notion that Mr. Jonas has that we have no idea what their argument is, that's not true. They've seen in our declaration -- first day declaration what our position is and why we believe the agreement was rendered unenforceable. So it's not like they don't have any idea where we're going with this.

It's a legal issue that'll be vetted in the briefing. Okay? It's not a basis to suggest, you know, to vitiate this important privilege.

So that's what I was going to say. Since the corporate restructuring that created LTL and to -- before the first bankruptcy, J&J, LTL, and New JJCI have been parties to a common interest agreement, written common interest agreement that continues in effect today. Corporate affiliates often have common interests. This does not change simply because the corporate affiliates are counterparties to a contractual agreement, the other sides of an agreement.

The Third Circuit seminal opinion in Teleglobe -- which, you know, it's shocking to me that their motion didn't

even mention this case -- makes that very clear. The court stated,

> "Thus, the community of interest privilege," its terminology for the common interest privilege, "allows attorneys representing different clients with similar legal interests to share information without having to disclose to others. It applies in civil and criminal litigation and even in purely transactional contexts."

Relying on this very language in Teleglobe, the District of New Jersey's decision in the Louisiana Municipal Police Employees case says the same thing:

> "The fact that parties may be on adverse sides of a business deal does not compel the conclusion that the parties did not share a common legal interest such as when the parties may face the possibility of joint litigation in which they would share a common interest."

So and Mr. Jonas' discussion of the Leslie Controls case is -- was completely off. What he was quoting was the parties' briefing on the other side that was trying to vitiate the privilege. The court actually found a common interest did exist between people on the other side of a transaction.

So getting back to the basic elements. There are three requirements for the application of the common interest

protection. First, the communications were made by separate parties in the course of the matter of common interest. Two, the communication was designed to further that effort. And three, the privilege has not otherwise been waived.

The communications they're seeking here meet all three of those requirements. The first two are kind of related, so I'll address those at the same time.

As stated in our brief, LTL and J&J share a common interest in effectuating and upholding the fundamental purpose of the 2021 funding agreement in seeking to resolve current and future talc claims through bankruptcy. The TCC declares in its motion and here today that the potential termination of the funding agreement created adverse interests between LTL and J&J, because any termination would strip LTL of more than $60 billion. That is wrong both factually and legally.

First, the termination of the 2021 funding agreement did not strip LTL of $60 million (sic passim). The value of that agreement is the extent of the talc liability minus the value of the debtor, not $60 million. The TCC makes no argument in its motion or here today that the talc liability exceeds -- or is at $60 billion.

Mr. Jonas suggests, well, we don't need to worry about what it is, because they still have adverse interests. Well, in order to determine whether they are adverse interests, you have to determine what was left after the funding agreement

was amended and was terminated and replaced. A new funding agreement was entered into with HoldCo which the record evidence has established has a value of approximately $30 billion. The TCC advances no argument nor any evidence that this amount is insufficient or that LTL was rendered insolvent as a result of its -- of this transaction.

On this record, there is simply no basis for what the Third Circuit termed in Teleglobe the exception for adverse litigation. There, the court noted that the common interest might be overcome where the parties to the common interest sue one another. That has not occurred.

The court also noted that in the parent wholly owned subsidiary context, there might be a divergence of interest if the debtor is -- if the subsidiary is insolvent. Again, there's no evidence in the motion or on this record to support that. Teleglobe controls, and it calls for denying the motion.

Finally, on the third requirement, waiver, there's no basis in this record to suggest that either LTL or J&J waived its common interest. As stated in our response, the Third Circuit law on this is very clear in the Rhone-Poulenc decision. It distinguished a situation where a party places its attorney/client communications directly at issue to support its claim and situations where it doesn't.

And the court noted:

"Relevance is not the standard for determining

whether or not evidence should be protected from disclosure as privileged, and that remains the case even if one might conclude the facts to be disclosed are vital, highly probative, directly relevant, or even go to the heart of the issue."

Here, neither LTL nor J&J has put the substance of its communications, the attorney/client substance, the work product, at issue to prove its position. Nor does it intend to.

Finally, there's no basis to apply the crime fraud exception. There's been no showing of a crime here. It's sort of like a throwaway in their brief. They don't develop it at all. There's no evidence to support a fraud. There's no basis to apply it at this time.

For all those reasons, the motion should be denied. I'll be happy to ask any -- happy to answer any questions.

THE COURT: All right. Thank you.

Mr. Jonas, is there any response?

MR. JONAS: I'll be very brief, Your Honor. Thank you.

MR. TORBORG: Excuse me, Your Honor. I --

MR. STARNER: Yeah. If I may, Your Honor?

THE COURT: Mr. Stamer?

MR. STARNER: It's Starner. It's Greg Starner --

THE COURT: I'm sorry.

MR. STARNER: -- on behalf of Johnson & Johnson. And I'll be brief, if I may?

THE COURT: Yes, please.

MR. STARNER: Thank you, Your Honor. So just to follow up on a few points that my colleague, Mr. Torborg hit on. I think, fundamentally, it doesn't sound like there's a real dispute about the common interest underlying the communications at issue. In fact, we've heard a lot from Mr. Thompson and others loudly complaining about that common interest. It was suggested at the beginning of their original bankruptcy filing and the original 2021 funding agreement which, in short, was a common interest between LTL and J&J to, you know, together resolve all current and future talc claims in bankruptcy and to fund a settlement trust to achieve that.

So that is the common interest that kind of underlines, you know, the communications at issue. And that was a goal that animated the original filing, as I said, and the original funding agreement.

Now, after the Third Circuit ruled, that common interest continued and remained. And the legal discussions kind of at issue as to what the impact of the Third Circuit decision was, was consistent with and in furtherance of that same common interest. Indeed, the purpose of the discussions about what the impact and effect of the Third Circuit decision

was, was about how can the parties continue to achieve that common goal and, indeed, effectuate the intent of the original funding agreement.

And so I think what we have here, Your Honor, what we heard, I think, from Mr. Jonas and, I think, as Mr. Torborg noted -- he did read from, I think, a helpful case that we cited to issued by Judge Sontchi from the -- Delaware, the In Re Leslie Controls case. And Mr. Jonas read from the movant's brief.

And in large part, they were asking for, I think, what the TCC is asking for here, which is, in effect, the establishment of a per se rule that parties engaged in negotiations can never share a common interest. That was the brief he was reading from. That's what they're asking the judge for there.

And that's exactly what the judge rejected. And, indeed, that court and other courts have recognized that with respect to common interest privilege, parties do not need to have a complete unity of interest. So, indeed, if parties are on the opposite side of the transaction -- or here, you know, contractual counterparties -- that is not a basis to say they do not otherwise have a common interest.

And, indeed, a common interest had been properly recognized where parties may be otherwise adverse, you know, as to other issues. And that's exactly, I think, what we have

here. You know, to the extent that LTL and J&J were contractual counterparties, that doesn't necessarily mean at all that they weren't entirely appropriate in pursuing their common interest and having some of these legal discussions that are, I think, at issue here. So I think that really fundamentally is the law on the issue, and I think it is dispositive for the Court.

And I just -- I think I would just follow up or, I think, conclude with two additional points, Your Honor. You know, we've heard a suggestion that there is a -- you know, a sword and shield issue here or a waiver concern. With respect to the amendment and substitution of the funding agreement, I think, in short, everyone is aware of kind of what the basis and rationale for that was. You know, the relevant inquiry ties into what the intent and goal of the parties were originally when they entered into the 2021 funding agreement, what the impact and scope of the Third Circuit's decision was on their ability to achieve and effectuate that goal, and what they did in response to that in terms of the only way to effect that intent and goal was, ultimately, to substitute and enter into the new funding agreement.

And then, finally, I would just note with respect to the legal scope of the funding agreement, both the original funding agreement and the current one, obviously, that's not before the Court right now. But, I think, certainly as we note

in our papers and, I think, it's clear from the documents themselves, the terms of those funding agreements are clear and unambiguous on their face. So to the extent there's a question about what the funding agreement -- you know, what it covers, it's very clear from the terms. And, indeed, it only covers, you know, the talc liability at issue, which was the case with the original agreement and continues to be the case with the new agreement.

So unless there's any other questions the Court has, we would just, obviously, ask the Court to deny this request. Certainly on this record there is no basis to, you know, enter a sweeping order that says there is no common interest privilege between J&J and LTL.

THE COURT: Thank you, counsel.

MR. STARNER: Thank you. Sure.

THE COURT: Mr. Jonas?

MR. JONAS: Thank you, Your Honor. I'll be very brief. Jeff Jonas, Brown Rudnick, proposed counsel to the TCC. Your Honor, I feel like I'm kind of in Alice in Wonderland today. All we've heard today is obfuscation.

I have no obligation today to prove the amount of talc claims or anything else. I simply want and am entitled to know what happened, why, how, when my client's fiduciary ended up giving up valuable rights in connection with the funding agreement. Did Johnson & Johnson threaten LTL with voiding the

funding agreement? If so, when? Who did it? On what basis was that done? What was my fiduciary's response? When did they make the response? Who made the response? Did they propose anything?

How did we end up where we are with termination of the funding agreement and J&J, as testified to by Mr. Kim at the preliminary injunction hearing, J&J off the hook for tens of billions of dollars? I think we are entitled to answers to those questions. That's all I have to say. Thank you, Your Honor.

THE COURT: Thank you, Mr. Jonas.

Mr. Thompson, briefly?

MR. THOMPSON: Yeah. Their common interest is to commit fraud on the creditors. I mean, that's what their common interest is. What this looks like -- and I think either Mr. Torborg or Mr. Starner talked about the substance of the communications. I mean, what it appears happened from Mr. Kim's testimony, and I don't know what the conversations were, but what we have good basis to surmise is that the J&J lawyers went to Mr. Kim and said, hey, you got to give away $60 billion, because LTL had access to 61 billion, in or out of bankruptcy, unconditional. And now, to the detriment of their creditors, in a complete breach of their fiduciary duty to the estate, LTL now only has a conditional promise from J&J for 8 billion and only if J&J gets a permanent injunction.

There has to be transparency on these issues. They had a duty to the estate, and they've clearly breached it. And we need to be able to discover if it was through fraud that they did so. This is textbook crime fraud exception. Thank you, Your Honor.

THE COURT: Thank you, counsel.

Mr. Gordon? Raised hand.

MR. GORDON: Thank you, Your Honor. I wanted to spend two minutes to respond, if I could, since, again, I've been referred to directly. And, you know, Mr. Thompson likes to quote, and he's done it everywhere, comments I made at the ABA last year. And, unfortunately, they're usually taken out of context.

But I wanted to underscore really just a couple of things quickly. Number one, it's not accurate to say that -- as Mr. Jonas just said, that they need to know what happened. They know exactly what happened. The witnesses have explained the rationale for the new financing arrangements. They've explained the -- their views on frustration of purpose. They've explained their views on the need to have agreements that actually effectuated the parties' initial intent, which is to resolve these claims through a trust and a bankruptcy proceeding.

What you're hearing today is nothing more than they don't like the answers. They have the information they need to

make the arguments that they're already making. They have the documents themselves, as Mr. Starner just said. They have the testimony of these witnesses.

And what they're asking you to do, in my judgment, is to go down a road that could set a very dangerous precedent where the -- a common interest that is universally recognized to exist between a parent and its affiliates can be penetrated even though they're acting together and in common with respect to litigation to which a subsidiary is subject. And I think that is very concerning that they would ask for this kind of sweeping relief. In my view, that would set a very dangerous precedent for this case and for future cases.

And, frankly, where would it end? I mean, they're basically suggesting that the fact that you're acting in a common interest isn't enough to protect the privilege. And that just can't be right. That's not consistent with Teleglobe.

And I would strongly urge Your Honor to reject their position. Thank you.

THE COURT: Thank you, Mr. Gordon.

All right. Well argued. My ruling is likely to be viewed as somewhat anticlimactic. In Teleglobe, the circuit makes clear that you apply the common interest doctrine when there's been a communication between two parties, separate parties, but that communication was made in the course of

pursuing a matter of common interest. And that communication must be designed to further that common interest.

Well, in order to gauge that, I actually believe it's necessary to view the specific document to be able to judge whether there's adversity and the timing and whether the goal is one of a common interest or a separate interest. I don't know how to do it otherwise. I am not prepared to come out with a blanket rule on common interest. I think Mr. Jonas rightly raised this possibility.

So my question for Mr. Torborg or Mr. Gordon would be I understand that a certain amount of confidential documents relative to the transaction at issue has been withheld under privilege, under both -- obviously, the common interest privilege and then under an underlying privilege, attorney/client work product. How long would it take to be able to produce for the Court a log or just the collection of documents with the highlight of the -- of that portion which -- or if it's not the whole document, that is for which a privilege is being asserted? What do you need?

MR. TORBORG: I think, Your Honor -- this is David Torborg again for the debtor. I think we would need at least a week to do that to make sure we're gathering all the documents.

THE COURT: Then how about by close of business next Tuesday you deliver the log with a copy of the log to the TCC and whichever parties request? And the Court --

MR. GORDON: Your Honor, it's -- I'm sorry.

THE COURT: Yeah.

MR. GORDON: I didn't mean to interrupt.

THE COURT: Go ahead. Mr. Starner?

MR. GORDON: It's Greg Gordon.

THE COURT: Oh, Mr. Gordon?

MR. GORDON: I just wanted to make the point since we will not have had an opportunity to confer with our clients to respond to your question, I would just ask Your Honor's indulgence to permit us to come back if we determine that it's simply not doable to have this done by next Tuesday. I don't think either Mr. Torborg --

THE COURT: Well --

MR. GORDON: -- or I really knows necessarily whether that can be done.

THE COURT: This is why I hope to build in a little more time before we get to the actual hearing. So these are the issues that come up. I try to be pragmatic. If there's an issue, you'll come back to me. Just come back to me sooner than Tuesday at 4 p.m.

MR. GORDON: Understood.

THE COURT: All right. So with that, we move on to the remaining, I believe, discovery motion. And I guess my question -- I don't know, is -- Mr. Winograd, are you --

MR. WINOGRAD: I am, Your Honor.

THE COURT: Mr. Molton, are you -- no. Who is it?

MR. MOLTON: No.

MR. WINOGRAD: Your Honor, this is --

MR. MOLTON: Mr. Winograd, Your Honor.

THE COURT: Oh, I see.

MR. WINOGRAD: This is Mike Winograd. I'm here.

THE COURT: All right.

MR. WINOGRAD: Yep.

THE COURT: It's so much easier in court.

MR. WINOGRAD: It is.

MR. GORDON: Hey, Your Honor?

THE COURT: What?

MR. GORDON: I'm sorry. It's Greg Gordon again.

THE COURT: Yes?

MR. GORDON: Can I go back and address one issue with respect to the confidentiality --

THE COURT: Yes.

MR. GORDON: -- motion that we talked about earlier --

THE COURT: Yes.

MR. GORDON: -- that I was apprised of? I think Mr. Satterley made the point that the only document that would be deemed confidential would be the exhibit to the term sheet. And Your Honor said yes. What I didn't want to have lost in this is if there were some confidentiality designations that

were made that were not the subject of any challenge by the TCC -- such as, there were some medical records, I think, that came up in the discovery. And I didn't want Your Honor's comments to suggest that you were overriding confidentiality designations that have not been subject to challenge, because there are a few.

THE COURT: I am not doing so blanketly. If there's an issue, you'll reach out for the Court. We'll have a call.

MR. GORDON: Thank you, Your Honor.

THE COURT: All right. Mr. Winograd, my question before we go down this path is, is this a situation where I should follow the lead I did in the last matter? Take it document by document? I haven't had the chance, obviously, to -- I see Bates stamp numbered documents, but I haven't perused them or the portions of them. Is that a more viable approach? I hate to put more work on myself.

MR. WINOGRAD: Yeah.

THE COURT: But it seems to be the only proper way to do it.

MR. WINOGRAD: Well, so, Your Honor, I think there are two different answers with respect to the redactions here. The one issue with respect to the redactions of claimant lists that are attached to the PSAs, I think that can be handled. We know what the information is, and that can be handled now.

With respect to the redactions that are just in two

board presentations -- and, really, Your Honor, those redactions in one board presentation is a subset of those in another. So we're really only talking about one board presentation.

And I think it would be useful to just at least touch on three out of the five groups of those redactions. And then if Your Honor would like to review in camera, to do so with the benefit of that background.

THE COURT: That's fine. Go ahead.

MR. WINOGRAD: So, Your Honor, again, there are -- again, Michael Winograd of Brown Rudnick, proposed counsel for the TCC. Your Honor, there are two sets of redactions at issue. There are, again, two board presentations that have some redactions in them. And we'll talk about one, because it consumes the subset that's in the second board presentation. And then the PSA -- the exhibit to the PSAs where it attaches claimant lists, there was information given -- personal information and only -- from what we received, only the first name was given to us. Everything else was redacted.

I want to address two things, Your Honor. One, there's argument in the brief that was filed last night by LTL with respect to a meet and confer as a sort of threshold issue. And then I'll argue on the merits. And I just want to briefly touch on the meet and confer issue.

With respect to the PSA, there absolutely has been --

have been meet and confers. We've asked repeatedly for the columns to be unredacted whether it's on a, you know, professionalized only basis or otherwise. Because we need to -- we need that in order to de-duplicate. We noted it in the PI hearing. We noted it in the May 9th hearing. And we've said that to them on several occasions.

With respect to the board presentations, we've asked them, I think a couple of times, to unredact them. We clarified in a May 11th email that we understood to have already asked for this, but if there's any doubt, please unredact all this.

We never received a response. Now, their response date to the document request may not have come, but we said, we think we covered all this. And either way, Your Honor -- we've had a lot of meet and confers with them -- if this specific issue with respect to the Board presentations, if I neglected to raise it, and I don't recall specifically having raised it in one our verbal meet and confers, I apologize.

But I will note that, either way, yesterday, I reached out and said, we should meet and confer since we have a lot on the table for Tuesday, and we, in fact, did meet and confer on this very issue yesterday. They did not agree to unredact anything, and they filed the brief in response. So, I don't think there's really anything to make of the meet and confer issue that they led off with.

Let me turn to the substance of the argument. The argument is whether the redactions, based on purported privilege are appropriate. The cases, again, cited by LTL don't really support their position. What they are, basically, are just generic cases saying attorneys can assert a privilege or a work product production. We agree with that. I think everybody agrees with that. That's hornbook law.

But what you cannot do is redact some privileged information on a topic and not all of the privileged information on that topic. Teleglobe makes that clear. We cited that in our brief, Docket 504. United Jersey Bank vs. Wolosoff, which has been cited by numerous Federal Courts, but a New Jersey State Court case, makes that clear. We cited that in our brief in Docket 441, on a different issue.

You cannot selectively disclose privileged information, because you can't -- and this is to quote -- "you can't divulge whatever information is favorable to you and assert the privilege to preclude disclosure of detrimental facts." That is what appears to have been done here.

And, if we can, Your Honor, I'm just going to highlight three simple examples, and I'm going to ask my colleague, who's in the room with me now, Lydell Benson, to just pull up on the screen -- and what we're looking at, Your Honor, is March 28th, 2023 Board presentation. You will notice that, most of which, Your Honor, at least two-thirds, if not

three-quarters of -- probably three-quarters of which has been unredacted.

If you'll notice, in the top right, it's marked privileged and confidential, attorney/client communication, attorney work product. Jones, Day, who put this together, I believe, saw fit to label this entire presentation privileged, yet they've now disclosed about three-quarters of it and won't disclose the remaining part. I will note, Your Honor, on this, one other key point, and that is, if you will look at the stamp at the bottom, it appears to be version seven on the title cover page.

But if you look at the next page, you'll see at the bottom, the remaining part of this is version six. Now, I can't -- I can't tell you what that discrepancy is, and that will be the subject of discovery, but I raise it because -- and I'll talk about something in conjunction with that -- there are two reasons that this -- that these portions should be unredacted. There's the law that says they should be because they're selective disclosure. And there's circumstantial evidence that really raises serious doubts as to the -- the basis or standard on which these redactions were made in the first place.

And so, it's unclear to us whether these were different versions or they put the cover of one on the body of another, and we'll get to that in discovery, but I just wanted

to point it out for Your Honor.

If you'll flip to -- if you'll flip to page two, you can see that they are talking about the status of LTL's Chapter 11 case, and the Third Circuit Panel dismissal opinion. Now, they later redact what they have to say about that Third Circuit opinion, even though they have listed some stuff here, and on the next page, you can see a few bullets on the Third Circuit opinion. I'll come back to that.

But if we can flip to page four, you'll see that this -- if you look at pages four to six, Your Honor, and this is the first circumstantial point that I'm talking about, there's an update regarding discussions with talc plaintiffs, and it talks about the PSAs. And if you flip to page five, you see supported plan terms. And it talks about 8.9 billion dollars is what's being put in and when that money will be paid.

And then, for some reason, even though supported plan terms continued on the next page, same subject matter -- they even say it's continued -- they redacted everything. They, later, several days later, if you flip to the next side, unredacted it. And if you look, again, it's just conditions and allocations. There's no apparent basis to have redacted this based on privilege, whatsoever, much less to have redacted this and not the prior couple of pages.

If you'll now look, Your Honor, at page seven, here we have, from the original, support of future claimant's

representative, discussions on the FCR, which Your Honor has heard a lot about in the previous hearing. If you look at the next page, in the subsequent filing, they have, for some reason, redacted this. So, they've unredacted some and then redacted a different portion in what they're filing.

And I point this out, Your Honor, because this really raises a cloud of doubt over the standards that were being used in redacting any of this. And if you look at just the substance, Your Honor, if you can flip to page ten, pages ten to 12 talk about -- if you look at ten, LTL's options in the event of dismissal. And it talks about, you know, a new Chapter 11 case and recapitalization and sale. If you'll flip to the next page, considerations regarding the immediate filing of a new Chapter 11 case, and they've not redacted this.

The benefits, it's supported by law firms in the FCR, a prompt filing achieves whatever -- you know, whatever those considerations are, but then, if you flip to 12, it's suddenly redacted, considerations regarding the filing in New Jersey. So, they've given us the options. They've given us the considerations for the filing, but for some reason, they decided that there is something special about the considerations with respect to venue.

Now, I don't know what it says under there, and if Your Honor looks at this in camera, Your Honor will see, and maybe it's embarrassing for them, but that's not a basis to

withhold, certainly not based on a privilege, in the context of a Power Point where everything else has been, where the majority or the three-quarters has been unredacted.

If you'll look, Your Honor, at page 13, potential modifications to the existing funding arrangements, you've got, that section is continued on the next three pages, but for whatever reason, the Third Circuit opinion is blacked-out here. If you flip to the next page, again, it continues on. They talk about everything other than the Third Circuit opinion, upon which all of what you're reading in unredacted form is based.

And, in fact, they've alleged that they terminated the 2021 agreement based on their reading of the Third Circuit opinion, but they won't tell you what that reading is. But they'll tell you everything else about it. It's just, again, selective disclosure.

We can turn to just two more examples, Your Honor. If you turn to 17, 17 to 19 are all redacted, and they're all discussion, potential new Chapter 11 case, following execution of the plan, support agreements and modification of funding agreements. We've talked about all of that. All of that's unredacted. The funding agreements were unredacted. They execution of a new support agreement was unredacted, and the potential filing of a new case was unredacted. Yet, for some reason, counsel has deemed these three pages special and

redacted them out.

Lastly, if you'll turn to page 20, pages 20 through 26, Your Honor, seven pages, are all about financial considerations. And, for some reason, if you flip to page 24, in the midst of all of this, you'll see a handful of lines, four lines, blacked-out, one more -- one more -- there you go. Right in the middle of all this discussion on financial considerations, they blacked-out a few lines.

Again, this is precisely the selective redactions that the courts say is impermissible. I would posit that there is nothing privileged about any of it. There's nothing unique about any of it, other than the fact that it came from an attorney, but they've already waived that privilege, right. We know that they marked this, privilege and confidential, attorney work product, attorney/client communication, but they have seen fit to, then, unredact three-quarters of it, and even unredact large portions of the same subject matters of minor stuff that they redacted.

With that, Your Honor, unless Your Honor has questions about this presentation, I'll turn to the redactions in the PSAs.

THE COURT: Yes, please.

MR. WINOGRAD: Okay. So, with respect to the PSAs, Your Honor, and this is really simple, the only ground that they have seen fit to redact information is that it is personal

information, and it is. They redacted the last name of claimants, the date of birth, the date of death, if applicable, and the claim type. We need that information, even if it's on a professional-eyes-only basis. We need that information for the duplication.

There has been -- we believe, the duplicated here will have a material impact on the number. We think that there are people who are listed twice, based on the first names and first initial that we've seen. We think there are people listed on multiple counsels' list where they're co-counsel twice. And so, we think there will be a material impact. This could be handled with a confidentiality designation.

One final point I'll make is that the Debtor seems to confuse unredacting that information and providing it on a confidential basis with a motion to seal or sealing the information or not providing it at all. The AHC does have a motion pending, which has -- which was relied on heavily in the brief submitted by the Debtor, but that was a simple motion to seal. The information, according to that motion, has been provided to the Court already. Multiple parties have asked for unredacted versions. I don't recall if it was agreed to with respect to the United States Trustee, but multiple parties, including the UST have asked for it. And there's just no basis not to provide it to us so we can actually check the number.

Again, a simple confidentiality designation can

resolve any conceivable concerns. This is not information we're looking to disclose to the public. And with that, Your Honor, I think that with respect to the Board presentations, there is simply no basis for that kind of selective disclosure, and Your Honor, I think, would confirm that by reviewing it in camera.

And with respect to the PSA, there's just absolutely no basis not to provide us that information so that our experts can run a deep -- you know, just simply deep-dupe it, even if it's marked on a confidential basis. Nobody has any intention of sharing personal claimant information with the public.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Winograd.

Mr. Torborg?

MR. TORBORG: Thank you, Your Honor. Again, David Torborg of Jones, Day on behalf of the Debtor. I want to focus, first, on the meet and confer. There is no dispute that Mr. Winograd did not -- or anyone for the TCC did not reach out to us to meet and confer before filing this motion yesterday morning. We had no idea it was coming, and it was, you know, scheduled for today. The motion is inappropriate, unripe and, as I will discuss, misinformed in many respects.
There is no certification on the motion that they met and conferred, as required, by both Bankruptcy Rule 7037 and the Local Rule. It just doesn't exist.

Now, Mr. Winograd said, oh, well, we talked about it yesterday. Well, we only talked about it because I brought it up that you didn't meet and confer on this, and so, we spent five minutes talking about it, and that's it. He seems to think it should be excused. That's not good practice. It's not fair to the Court. It's not fair to the parties, and it's just not -- you know, it's not consistent with the rule that requires a certification, okay.

Here, it may have mattered. The parties may have been able to reach an accord before this motion was filed on the -- for example, on the claimant list issue. They're saying, now, they only want something on a professional-eyes-only basis. Obviously, I'll need to confer with those at J&J and those on the Ad Hoc Committee to see if that might work. There's another way to deal with this deep duplication issue, other than giving up all this personal information.

And, second, on the Board presentations, if you read their motion, they're suggesting that, you know, we've made all these relevance determinations, and that's not true. I mean, we didn't -- we didn't redact anything because it was not relevant. We redacted it based on attorney/client privilege. And if we would have had a meet and confer, we probably could have talked about that, and we may have made some progress, in me explaining why it is that some things are privileged in the presentation and some are not without disclosing, obviously,

the contents.

The motion provides no factual or legal basis to vitiate the assertion of the attorney/client privilege. Mr. Winograd suggests, today, that, oh, well, because the document is stamped in the upper right corner, privileged and confidential, that everything in the presentation is attorney/client privileged and, oh, by -- by not redacting everything, we have waived the privilege.

That's a ludicrous position. I mean, parties stamp documents privileged and confidential, attorney/client privilege all the time, and then later, redact them subjectively. The purpose, of course, is to signal to people, hey, there might be privileged information in this document before it's produced. That would set a very bad precedent.

And, then, you know, in terms of, he talks about selective waiver. If you just go through, and I'll share it on the screen, as well, some of the matters that he was discussing -- for example, I'll go to, you know, page three, for example, it's talking about LTL filed a petition for a panel, for a hearing. It's talking about facts, pure facts. It would have been inappropriate for us to redact that.

And on page two, the previous page, it's just talking about the status of the case and what was going on. Giving up dates on the status of efforts to get support, factual. Supported plan terms, factual. Conditions to payment, again,

we did unredact this two days later and produced it. Their motion didn't even acknowledge that.

Duties of LTL managers, well, it's not -- it shouldn't be surprising to anybody that discussions of fiduciary duties would be a legal topic, and the Board would be given legal advice about what their duties are. So, there has been no selective -- in fact, he didn't point to anything specific where we waived something that arguably is privileged, because we haven't. So, there's no basis for any notion that there's been a selective waiver here.

And on the claimants -- the claimant list, you know, we view that as being up for the Court's consideration, in connection with the Ad Hoc Committee's supporting law firm's motion to seal. So, and we do think there is some way that we can resolve this, outside of having to turn over all of that personal information.

So, unless the Court has any questions, that's all I have. Thank you.

THE COURT: Thank you, Mr. Torborg.

Mr. Hansen?

MR. HANSEN: Yes, Your Honor, just briefly, the parties are all correct. We, as you know, filed our motion to seal the information that we filed in connection with our 2019. It's the same information that is annexed to the PSAs. It's -- so we put it in front of the Court. So, I would like the

opportunity to speak with the TCC's counsel and try to work through that, so Your Honor doesn't have to make a ruling with respect to that.

We understand the concerns on the deep duplication, but there is also a concern about who is doing that. Obviously, if there are duplicate names, which there appear to be on the existing schedules, somebody has to figure that out. And figuring that out probably requires client contact, so we have to be careful about that, right. It's not something that one party should use as a strategic advantage to themselves and use it as some guise to contact the client, et cetera.

But I think the parties need to talk to each other. We haven't yet had that opportunity. Our motion is on for June 1st, and this came up today, obviously because of this motion to compel. So, I do think we need to work out a reasonable way to handle it. Hopefully, we don't have to bring it back to you after that, but there is a lot of information on there, like last four digits of social security numbers, home addresses, you know, dates of birth, dates of death, type of injury alleged, et cetera. And we don't think all of that information is necessary in order to do a deep duplication analysis at a high level. But nevertheless, I think what we should do, and if the counsel is amenable to it, we should talk about an appropriate, either confidentiality agreement or a protective order in order to try to deal with this situation.

THE COURT: Fair enough. All right.

Mr. Winograd, last comments?

MR. WINOGRAD: Yes, Your Honor.

THE COURT: Go ahead.

MR. WINOGRAD: Michael Winograd from Brown, Rudnick, proposed counsel for the TCC. Your Honor, I just really just want to make -- address a few comments that were made by counsel for the Debtor.

The comment that there is no dispute that a meet and confer was never had is just not right. We did absolutely meet and confer, as I noted, in connection with the PSA lists. We've done that several times, including with Ms. Jones, who I know is not here, but on big groups where we've hashed that position out multiple times. We did, with respect to the -- again, as I noted, with respect to the presentations, we made our position known.

We had an email asking for the information on May 11th. And, again, I raised it yesterday, and we -- or I asked for the meet and confer yesterday. I don't recall who raised this motion. I said, let's talk about all the motions, and it was discussed yesterday. Had they wanted to propose unredacting any of it, they could have, but they didn't. They filed the response instead.

Number two, they say that stuff may have been able to be resolved. That's what counsel argued. Well, with respect

to the claimant list, we've asked multiple times for the list. Multiple times over weeks, we've said we can address this through confidentiality. With multiple attorneys on that side, the answer has always been no or just ignoring us.

With respect to the Board presentation, this allegation that we made relevance arguments. There is one line in paragraph two of our entire motion that just notes, relevant -- and we noted, we don't know why, but there is no apparent basis for any of these redactions. We just noted that relevance redactions are not appropriate. It was one line. That's all that would have been saved is one line in our brief.

With respect to the actual -- this idea that there is no actual privileged information that was otherwise disclosed, counsel were the ones who marked it attorney/client privilege and communication. Everything in there is an attorney/client communication, and it is replete with advice of counsel, mental impressions. The idea that counsel says, there is nothing that was disclosed other than simple facts -- there was discussion of FCR discussions. There was discussion of supported plan terms. There were discussions of options in the event of dismissal at page ten, considerations regarding a new file at page 11, potential modifications to the existing funding agreement, a summary of key modifications to the existing funding agreement, financial considerations, next steps. That is legal advice, Your Honor, all of it.

They chose to provide it and unredact it. They cannot simply take subsets of that and keep it disclosed. Thank you, Your Honor.

THE COURT: Thank you, Counsel.

All right. I'm going to ask counsel to continue their discussions regarding the client lists, and if you can't come to an accord through either a confidentiality agreement or some more limited mechanism, then advise the Court, and I'll call it.

With respect to the Board meetings, the best I can suggest is to have the Debtor, within that same one-week period, send me the unredacted version highlighting which portions are in dispute, and the Debtor can, you know, provide a basis for the privilege, a simple notation, attorney/client, work product or anything else they want to add. You can, obviously, provide that to your adversary, as well, except with the unredacted portion, keep it redacted. And I'll rule on it as soon as I have it in front of me.

Any other issues with respect to discovery?

Mr. Molton?

MR. MOLTON: Your Honor, not discovery, just ending with a case management issue, like we began with, but different.

THE COURT: All right. I did want to raise some case management concerns. Let me, if I can, and then I'll see

whether or not I hit on anything you wanted to raise.

MR. MOLTON: Thank you, Judge.

THE COURT: We do need certain dates for omnibus dates. So, right now, we have June 13th. I've blocked out the June 27th week. The next omnibus date I'm going to give this case is July 11th. Needless to say -- and as far as June 13th, we start at 10:00. The omnibus dates will start at 10:00.

If the week blocked out shifts to the week of July 11th, then, there will be no need for an omnibus date. And then, another omnibus date, August 2nd. That should get us to a point where we see where the case is going. Obviously, if there are emergent matters, I'll hear those in between.

Mention was made earlier -- it seems a long time ago -- regarding mediation. And Mr. Molton raised issues relative to estimation. I think it's -- I just got a note. Before I do that, we have a motion to pay admin expenses from the last bankruptcy case that's scheduled, now, for 6/22. I'm inclined -- I don't think that we have matters on for 6/22. I'll move that to an omnibus date, probably the 11th.

MR. STOLZ: It was on for May 22nd.

MR. MOLTON: Your Honor, I'm informed it was May 22nd, as Mr. Stolz just chimed up, as well.

THE COURT: Oh, May 22nd? Then, I can put it on for the 13th. And, as far as estimation, I have thought about the need to continue with the 706 expert on estimation for purposes

of plan confirmation or plans, however we proceed. It is premature at this point. However, I do believe mediation is appropriate. I've said that before. I see no reason to halt or stay or delay mediation.

But, now, tying the two together, I do recognize that Mr. Feinberg, as a 706 expert, had put together quite a bit of information and data, and while I am not appointing him in this second case, as of now, I see no reason why the data shouldn't be made available to the mediators, not the parties, but to the mediators to help facilitate their work.

So, I will -- I will ask Debtor's counsel to just send down an amended mediation protocol order. To make it clear, I want to make sure nobody is in the hot seat for providing data. Whether it be Mr. Feinberg or the FCR's information, that information should be available to the mediators. Again, let me stress that. No report's being issued. No report is being docketed.

All right. Mr. Stolz, did you have your hand up, before I go to Mr. Molton?

MR. STOLZ: Yes, Your Honor, just on scheduling. Your Honor, I think was suggesting that you were going to kick the motion to pay the fees of the first case to June 13th. I would just note, Your Honor, that that's delaying any retention orders getting entered, and I don't think anybody is going to object to that motion. So, I'd ask Your Honor to keep it on,

at least for calendar purposes for the 22nd. In the event that there is no objection, the Court can then enter that order, and we can get retained, instead of keeping referring to ourselves as proposed counsel.

THE COURT: Let me hear from my clerk for a second.

THE CLERK: This is different than the retention applications that Mr. Stolz is talking about. There are two matters we need to check that are scheduled for June 22nd.

THE COURT: What she is saying, what she noted, these are different than the ones related to retention. These are actually two motions to compel payment that are scheduled for June 22nd.

MR. STOLZ: Okay. Those are the ones, I think, Mr. Abramowitz filed or somebody filed --

THE COURT: So, we're going to leave those -- I'll move those to an omnibus date.

MR. STOLZ: Okay. But we're going to leave the Committee professional payment on the 22nd.

THE COURT: Correct, I haven't changed that.

MR. STOLZ: Okay. Second scheduling item, Your Honor, is, after conversing with Ms. Earl, we put our motion for derivative standing on for the 7th at 10:00 a.m. Is that going to stay on the 7th or is that going to go to the 13th?

THE COURT: I would move it to the 13th. I don't need to see you every week.

MR. STOLZ: Okay. And, lastly, Your Honor, this is just a notation, but about ten days ago, the Debtor filed its applications to retain its professionals and filed the schedules, and I think we've already indicated that they reflect $15,000,000 of payments on April 4th of Debtor professional fees.

About ten days ago, I asked Mr. Prieto to send us the bills that resulted in those payments, and he's indicated he has had trouble catching up with his client to have that conversation. So we're hoping that -- I'm hoping that by mentioning it on the record, he speeds up his connection with his client on that issue, and I hope I don't have to bring it before Your Honor, but I just wanted to make note that we've asked for those bills, and we hope they're going to be produced without us having to burden Your Honor with more discovery.

THE COURT: Well, all right, I take it you're just using my Zoom as a means of communication. Thank you, Mr. Stolz.

Mr. Molton?

MR. MOLTON: Judge, Mr. Stolz stole my thunder. I was going to mention the standing motion that was on for June 7th and suggest it be moved to the 13th, so --

THE COURT: All right. Then, Mr. Gordon, I see Your Honor.

MR. GORDON: Thank you, Your Honor, Greg Gordon. I

just want to be heard for a moment on the standing motion. I think, by its terms, and admittedly, I've only read it quickly, that's a conditional motion. It's basically, the way it's written, I think, is in the event Your Honor determines not to dismiss the case, the Committee wants to proceed with the lawsuit. And so, based on that, our suggestion would be that you move that behind the dismissal matter, because it is conditional, and we should pick it up after that.

THE COURT: Well, I haven't looked at it, in all fairness. Why don't I ask that you reach out to the Committee counsel and see if it makes sense?

We know that the 13th will be busy enough, so if it's not critical, it would make sense, but why don't you confer with counsel and get back to the Court?

MR. GORDON: Will do. Thank you, Judge.

MR. MOLTON: Thank you, Judge. We'll wait for Mr. Gordon to call.

THE COURT: All right. So we are adjourned. Thank you, all. I appreciate your efforts.

ALL COUNSEL: Thank you, Your Honor.

(Proceedings concluded at 1:23 p.m.)

* * * *

C E R T I F I C A T I O N

We, DIPTI PATEL, LORI KNOLLMEYER, LIESL SPRINGER, and JACQUELINE MULLICA, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Dipti Patel
DIPTI PATEL

/s/ Lori Knollmeyer
LORI KNOLLMEYER

/s/ Liesl Springer
LIESL SPRINGER

/s/ Jacqueline Mullica
JACQUELINE MULLICA

J&J COURT TRANSCRIBERS, INC. DATE: May 17, 2023